

1992

Dennis Sykes, Dwane J. Sykes, Patricia Sykes, &
Johnny Iverson v. Howard F. Hatch, Marjorie S.
Hatch, Howard Hatch & Associates v. Anthony
Ragozzine, Ruth W. Ragozzine, Provo Land Title
Co. Leon Peter Pierotti & Karen E. Pierotti v. Leon
Peter Pierotti & Karen E. Pierotti : Brief of Appellee

Utah Court of Appeals

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Anthony Ragozzine; Ruth Ragozzine; Leon Peter Pierotti; Karen E. Pierotti; Howard F. Hatch; Spencer F. Hatch.

Dwane J. Sykes, Patricia Sykes; Dennis L. Sykes; Johnny Iverson.

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DOCKET NO. 920470

IN THE UTAH COURT OF APPEALS

DENNIS SYKES, DWANE J. SYKES,
PATRICIA SYKES, & JOHNNY IVERSON,
Plaintiffs, Cross-Appellants, & Appellees

vs.

HOWARD F. HATCH, MARJORIE S. HATCH, HOWARD
HATCH & ASSOCIATES (fka EQUITABLE REALTY, INC.),
Defendants/Third-party Plaintiffs
Appellants, & Cross-Appellees.

vs.

ANTHONY RAGOZZINE, RUTH W. RAGOZZINE,
PROVO LAND TITLE CO. LEON PETER PIEROTTI
& KAREN E. PIEROTTI,
Third-party Defendants & Appellees,

vs.

LEON PETER PIEROTTI & KAREN E. PIEROTTI,
Cross-defendants and Cross-Appellees.

BRIEF OF APPELLEES
AND

BRIEF OF CROSS-APPELLANTS

Case No. 920470-CA
(Supreme Ct. 920160)
(Trial Ct. CV. 57-127)

Priority No. 29(b)(16)

APPEAL AND CROSS-APPEAL FROM SUMMARY JUDGMENT AND DISMISSALS OF THE FOURTH
JUDICIAL DISTRICT COURT OF UTAH COUNTY, THE HONORABLE DAVID L. MOWER, PRESIDING

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FILED

OCT 15 1992

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

DENNIS SYKES, DWANE J. SYKES,
PATRICIA SYKES, & JOHNNY IVERSON,
Plaintiffs, Cross-Appellants, & Appellees

vs.

HOWARD F. HATCH, MARJORIE S. HATCH, HOWARD
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& KAREN E. PIEROTTI,
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IN THE UTAH COURT OF APPEALS
STATE OF UTAH

HOWARD F HATCH, MARJORIE S.
HATCH, and UNIVERSITY AVE
DEVELOPMENT ASSOCIATES, a
limited partnership,

Appellant Plaintiffs ,

vs.

ZIONS FIRST NATIONAL BANK,
DWANE J.SYKES, VIRGINIA FLYNN,
and WILLIAM CHRISTIANSEN d/b/a
ARAPIAN VALLEY LIVESTOCK CO.,

Appellee Defendants

APPELLEE BRIEF OF
DWANE SYKES

CASE # 920470-CA

DATE: 12 OCTOBER 1992

ARGUMENT PRIORITY 16

DWANE J. SYKES and PATRICIA
SYKES

Appellants Plaintiffs

vs.

ANTHONY RAGOZZINE and
RUTH RAGOZZINE

Appellees Defendants

APPEAL FROM THE SUMMARY DISMISSAL OF THE FOURTH
JUDICIAL DISTRICT COURT OF UTAH COUNTY
HONORABLE DAVID L. MOWER

JURISDICTION

Under Rule 42(a) U.R.A.P. the Utah Court of Appeals has jurisdiction over cases transferred from the Utah Supreme Court to the Utah Court of Appeals.

Under Rule 3 U.R.A.P. the Utah Supreme Court has jurisdiction over a final order from a District Court. Such is the case here.

ISSUES

1. Did the trial court err in dismissing the claims of Appellant Hatch where the court determined that there were no outstanding causes of action against Mr. Sykes and the dismissal was a sanction against Mr. Hatch.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES &

REGULATIONS

None at issue

FACTS

The original counter claim was filed by Mr. Hatch et. al. 1980 and amended on May 9 of 1983. The principal claims by Mr. Hatch are:

- 1) They were the owners of a piece of land that was about to be sold at trustee sale.
- 2) Virginia Flynn had agreed to rescue the Mr. Hatch from the sale.
- 3) Mr Sykes, Zions Bank and Zions Bank's attorney scared her off by claiming that a lawsuit was possible and imminent.
- 4) The land was sold at trustee sale.
- 5) Mr. Christiansen bought the property on behalf of Mr. Sykes.

The case has been off and on for years due to the antipathy of the litigants and the fact that Mr. Hatch and some of his alter egos have been in and out of bankruptcy several times during the period. The three cases were all consolidated since they had some basis in the same issues and facts. The root cause of the controversy is a piece of property in Provo which Mr. Sykes and Mr.

Hatch both claimed to own. Mr. Hatch claims that many evil deeds were perpetrated by Mr. Sykes including picking berries, grazing animals and illegal fertilization with pond sediment. He also claims that Mr. Sykes had a duty to water the grass which he didn't fulfill; this reveals that even Hatch considered Sykes the buyer with buyer's duties.

Mr. Sykes claims that Mr. Hatch contracted to sell him the property and since reneged on the deal. Mr. Hatch claims that because of Mr. Sykes vigorous pursuit of his claim to the property a person willing to loan money on the property was scared off. Mr. Hatch claims that the money would have saved the property from foreclosure by Zions Bank.

The money was not loaned to Mr. Hatch and therefore the property rights of Mr. Hatch were foreclosed and the property was sold to Mr. Christiansen at a sheriffs sale.

In addition, the water shares to the property were transferred to Mr. Sykes by Provo title at the behest of the previous owner (Raggozines). Mr. Hatch has accused Mr. Sykes of improperly obtaining these rights and has sued both Provo title and Mr. Sykes for return of those shares.

Mr. Hatch filed suit against Mr. Sykes, Zions Bank, Mr. Christiansen and Zions Bank's lawyers. Mr. Hatch settled its problems with Zions and Zions lawyers for a cash payment. Due to the settlement and the affirmation of the sheriff's sale, Mr. Christiansen was dismissed from the suit on his motion. On separate motion, all claims against Mr. Sykes were also dismissed after the trial court determined that, with no claim on the property Mr.

Hatch no longer had a cause of action against Mr. Sykes. Mr. Sykes counterclaims against Mr. Hatch and the Ragozzines were also dismissed for failure to prosecute.

SUMMARY OF ARGUMENTS

Slander of title requires that Mr. Hatch have some interest in the property. Mr. Hatch has no interest in the property due to the sale of the property and subsequent affirmation of the sale.

The claims concerning the water shares have no merit whatsoever. Water shares are not unique property. They can be readily bought and sold. So, there is no need for specific water shares held by Sykes to be transferred to Mr. Hatch in the event that his claim is meritorious. Further, the problem is between the Ragozzines, Provo Title and Mr. Hatch. Sykes has no obligation (is not in privity of contract with Hatch) to transfer any water shares.

Slander, Extortion, Grazing, picking berries, not watering, illegal fertilization (with pond sediment) and log removal are all de minimus claims designed to fill out the complaint. On slander and extortion (which is not a recognized tort) the requisite elements have not been pled. These were dismissed by Judge Mower as a sanction against Mr. Hatch for non-prosecution and de minimus.

ARGUMENT

Mr. Hatch has made the following claims in his AMENDED ANSWER (THIRD), AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT (SECOND):

BREACH OF CONTRACT/FIDUCIARY UNLAWFUL CONVERSION AND FRAUD

FOR WATER SHARES

Since Mr. Sykes was not in privity of contract With Mr. Hatch, nor did he owe any fiduciary responsibility to Mr. Hatch, the first part of this claim could not apply to him.

A conversion requires an unauthorized act which deprives the owner of his property. No unauthorized act occurred. The shares were transferred from Provo title legally and correctly. Second the property did not belong to Mr. Hatch. The property belonged to the previous owner (the Raggozines). Water shares are not unique property but are readily bought and sold, so the exact shares transfer to Mr. Sykes do not need to be returned to Mr. Hatch even if they belonged to Mr. Hatch. If Mr. Hatch has some claim to water shares from the Raggozines, that is a matter between Mr. Hatch and the Raggozines and does not concern Mr. Sykes. Mr. Hatch unilaterally dismissed Raggozines who are an indispensable and necessary party.

Fraud requires some misrepresentation on the part of Mr. Sykes to Mr. Hatch on which Mr. Hatch relied. There was no communication between Mr. Hatch and Mr. Sykes at all, regarding the water shares; much less some communication on which Mr. Hatch relied. There is

therefore no fraud alleged that could have involved Mr. Sykes.

SLANDER OF TITLE REQUIRES SOME INTEREST IN THE PROPERTY

Mr. Hatch has alleged that Mr. Sykes owes him damages for Slander of Title.

Mr. Hatch claims that the lower court was wrong in its holding that a slander of title requires that Mr. Hatch hold some interest in the property.

The prevailing rule is and has been that where a party does not have an interest in the property slandered he has no standing to sue. The fact of a past interest is not sufficient to create such standing. In Bennett v Pace, 731 P.2d 33 (Wyo 1987) a similar situation to the instant case was decided. In that case a contractor placed a mechanic's lien on the property of the plaintiff. The plaintiff subsequently sold the property and then brought suit against the contractor for slander of title in placing the lien. The Supreme Court of Wyoming ruled that the plaintiff had no standing to file such a suit since he no longer had an interest in the property.

Such is the case here. In this case the lawsuit was filed after the property had been foreclosed and subsequently sold. At the time of the filing of the lawsuit Mr. Hatch did not have an interest in the property. Therefore he had no standing to bring a slander of title action.

Even if Mr. Hatch had some claim to the property at the

beginning of the suit, Mr. Hatch along with all other plaintiffs during the pendency of the suit settled their claim to the property. In that settlement the plaintiffs (Mr. Hatch) agreed in their stipulation that:

Plaintiffs ... agree that the trustee's sale ... was a bona fide, arm's length, non-collusive, valid and binding Trustee's sale. ... Plaintiffs ... waive and abandon any ... claims and defenses ... which ... challenge or dispute the validity ... of the Trustee's Sale or the title of the purchaser at the Trustee's sale.

If Mr. Hatch had any claim to the property before the settlement, any such claim was subsequently extinguished. Therefore if Mr. Hatch had standing to assert slander of title previous to the settlement, he had no such standing subsequent to it.

It is undisputed that Mr. Hatch has no current interest in the property as required by a slander of title action. Therefore an action for slander of title cannot proceed. It was properly dismissed.

SLANDER, EXTORTION, GRAZING, PICKING BERRIES, NOT WATERING, ILLEGAL FERTILIZATION AND LOG REMOVAL.

All of these things are de minimus items designed to fill out a complaint. On the claim for slander the requisite elements have not been pled. Extortion is not even a recognized tort and Mr. Hatch has never pursued any effort to prove, plead or explain his claim. Mr. Hatch claims that Mr. Sykes should compensate him for picking berries, not watering and for fertilizing the pasture with sediment from the pond. Such claims are ludicrous and beneath the

dignity (as well as the statutory jurisdiction) of the District Court. Water shares sell for \$300-\$500 per share. The shares in controversy here are .6 shares. This brings the total in controversy to \$180-\$300. See affidavit of Melvin Ludlow in Appendix . In his ruling dismissing these actions Judge Mower dismissed these as a sanction for non-prosecution and for abuse of process.

It is significant also that defendant Christiansen was awarded attorney's fees from Mr. Hatch for Mr. Hatch's abuse of bankruptcy procedures. See Addendum

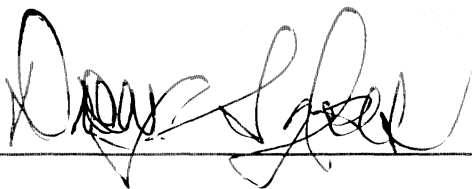
Of course, Mr. Hatch has thrown in outrageous claims for punitive damages (\$455,000). But, punitive damages are derivative in nature and cannot be awarded unless they are supported by actual damages.

CONCLUSION

Judge Mower properly dismissed these claims. The slander of title claim is precluded due to Mr. Hatch's lack of an interest in the property. The requisite elements for the claim for conversion of water shares have not been pled and simply do not involve Mr. Sykes. Mr. Hatch's claim, if any, concerns himself, the Raggozine's and Provo Title.

The only remaining claims are clearly harassment tactics which are de minimus and below the jurisdictional limits of the District Court. Judge Mower dismissed these claims as a sanction against Hatch for his non-prosecution and his abuse of the legal process.

This is vexatious litigation that has been going on for almost 13 years. Mr. Hatch once stated that he intended to hound Mr. Sykes to his dying day. It is appropriate that the court help Mr. Hatch overcome his vendetta. Judge Mower properly decided that it was time that this litigation be put to rest. The decision of the trial court to dismiss should be affirmed.

A handwritten signature in dark ink, appearing to read 'Dwane Sykes', is written over a horizontal line.

Dwane Sykes pro se

IN THE UTAH COURT OF APPEALS

DENNIS SYKES, DWANE J. SYKES,
PATRICIA SYKES, & JOHNNY IVERSON,
Plaintiffs, Cross-Appellants, & Appellees

vs.

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vs.

ANTHONY RAGOZZINE, RUTH W. RAGOZZINE,
PROVO LAND TITLE CO. LEON PETER PIEROTTI
& KAREN E. PIEROTTI,
Third-party Defendants & Appellees,

CROSS-APPELLANTS' BRIEF

Case No. 920470-CA
(Supreme Ct. No. 92160)

(Trial Ct. CV. 57-127)

Priority No. 29(b)(16)

DWANE J. SYKES and PATRICIA SYKES,
Plaintiffs and Cross-Appellants,

vs.

ANTHONY RAGOZZINE and RUTH RAGOZZINE,
Defendants and Cross-Appellees,

(Trial Ct. CV. 57-125)

HOWARD F. HATCH, MARJORIE S. HATCH, &
UNIVERSITY AVENUE DEVELOPMENT ASSOCIATES,
a limited partnership,
Plaintiffs, Appellants and Cross-Appellees,

vs.

ZIONS FIRST NAT'L BANK, DWANE J. SYKES,
VIRGINIA FLYNN & WILLIAM CHRISTIANSEN dba
ARAPIAN VALLEY LIVESTOCK CO.,
Defendants, Cross-Appellants, & Appellees,

(Trial Ct. CV. 63-695)

JURISDICTION

The Utah Supreme Court has jurisdiction in this matter pursuant to Utah Code Ann. §78-2-2(3)(j), but has poured over this case to the Utah Court of Appeals pursuant to U.C.A. §78-2a-3(2)(k) and is bases on Cross-appellants timely Notice of Appeals filed August 23, 1991, and Sept. 11, 1991; and Notice of Cross-Appeal filed April 3, 1992.

ISSUES AND STANDARD OF REVIEW:

For summary judgment and involuntary dismissal both courts must review all the evidence, together with every logical inference which may fairly be drawn therefrom in the light most favorable to Cross-appellants (Geneva Pipe Co. v. S & H Ins. Co. 714 P.2d 648 (Utah 1986); Martin v. Stevens, 243 P.2d 747 (Utah 1952), and where no findings of fact were made, show that he was entitled to relief sought (Davis v. Payne & Day Inc. 348 P.2d 337 (Utah 1960)). Four issues are presented on this cross-appeal:

Hpe Co. v. S & H Ins. Co. 714 P.2d 648 (Utah 1986); Martin v. Stevens, 243 P.2d 747 (Utah 1952), and where no findings of fact were made, show that he was entitled to relief sought (Davis v. Payne & Day Inc. 348 P.2d 557 (Utah 1960)). Four issues are presented on this cross-appeal:

ISSUE (1): Did the sixth substituted trial judge err or abuse his discretion by his surprise sua sponte dismissal of Sykes' claims against the Ragozzines in case CV 57,125:

Where the Judge stated that his dismissal was based exclusively on Sykes' ostensible failure to prosecute discovery against the Ragozzines, and

Where that Ragozzine case was consolidated with companion Hatch cases, to which the Ragozzines were already parties and which also included Sykes' identical causes of action, and

Where, unbeknown to that new Judge, Sykes in fact had aggressively and consistently filed hundreds of discovery pleadings against the Ragozzines, taken depositions, argued at hearings with Ragozzines, and where the cases were repeatedly stayed by Hatch's going in and out of bankruptcy?

ISSUE (2): Regarding the 1973 Hatch/Pierotti/Sykes house sale-contract, did the trial court err or abuse its discretion in dismissing, with prejudice, both of buyer Sykes' cross-claims and third-party complaints against sellers Pierottis (filed with express leave of the Court):

Where the Court failed to file the required Findings of Fact or Conclusions of Law, and gave no basis or reason for that dismissal; and

Where Sykes was never in default but the Pierottis were

constantly in repeated defaults over several years, and

Where Pierotties had accepted \$25,500 cash downpayment from Sykes but refused his demands to return it to him or to perform title, and

Where Pierotties never had nor obtained any fee title and also refused to procure or protect or deliver fee title as required by contract, and

Where Sykes, despite his payment-in-full still has absolutely no fee title to the Pierotti house, and

Where the title still vests in Hatch's alter ego, University Avenue Development Associates, to whom Hatch fraudulently conveyed it in 1983 as a fraudulent protection during one of his bankruptcy cases?

ISSUE (3): By enforcing that same 1973 Hatch/Pierotti/Sykes house sale-contract under the above-said facts, was justice and equity served and did the trial court err or abuse its discretion in granting summary judgment of specific performance and release of court-held \$17,000 cash to seller-in-default Hatch, instead of granting rescission as requested by buyer-not-in-default Sykes:

Where the trial Court actually and prematurely delivered to Hatch \$17,000.00 cash including \$8,000 fail-safe over-payment which Sykes had timely paid into a safe-keeping escrow pending Hatch's timely performance, which was then ordered transferred into custody of the Court, and

Especially where the trial Court permitted and ordered Hatch to belatedly perform his 1973 contract to Sykes---several years late---by the simultaneous delivery of the fee-title deed together

Where neither sellers Hatch or the Pierottis have ever delivered said fee-title or any deed nor any policy of title insurance, and

Where, despite the trial Court's express order to Hatch and his agent Rowley Title Co., Rowley Title Co. refuses to insure title for lack of marketability and for apparent fraud/forgery by Hatch, and for those reasons Rowley Title Co. also refuses to record the deeds now held by it for over a year under said court order, and

Where the said title still vests today in Hatch's alter ego, University Avenue Development Associates, to whom Hatch fraudulently conveyed it in 1983 as a fraudulent protection during one of his bankruptcy cases, and

Where Hatch/UADA was unjustly enriched by now having BOTH his full sale money from Sykes and yet still owning fee title to the said property, and

Where Pierottis are also unjustly enriched by having their full sale money from Sykes despite total and longstanding nonperformance of their obligations, and

Where the Court thus required Sykes to involuntarily pay out the entire \$35,500 purchase price yet Sykes still has no fee title nor the required policy of marketable title?

ISSUE 4: Did the trial court err or abuse its discretion by its surprise sua sponte dismissal of all of Sykes' claims against the Hatches, as sanctions for Sykes' being 10 days late in filing a reiterated Summary Of Claims from his complaint:

Where, being already of record, its tardiness was harmless and not prejudicial to any party, and

Where Sykes has routinely and timely filed hundreds of pleadings during this 12-year pendency, and

where Sykes' tardiness was due to "serious and life-threatening illness and incapacity", which was timely noticed and supported in advance by affidavits of Sykes' several medical physicians, and

Where said sanction of dismissal was imposed merely upon the court's admitted and unconfirmed suspicion and without reviewing the several medical affidavits and letters in the file and in his own hand on the bench?

DETERMINATIVE LAW

U.R.C.P. Rules 41, 30, 34, 36, and 56; U.C.A. § 78-12-1; Westinghouse Elec. Supply Co. v. Paul W. Larsen Contractor, 544 P.2d 376 (Utah 1975); Martin v. Stevens, 243 P.2d 747 (Utah 1952); Davis v. Payne & Day Inc. 348 P.2d 337 (Utah 1960); Petrie v. General Contracting Co. 413 P.2d 600 (Utah 1965); Geneva Pipe Co. v. S & H Ins. Co. 714 P.2d 648 (Utah 1985);

STATEMENT OF THE CASE

The three underlying disputes are between the same general parties, surrounding realtor Howard F. Hatch ("Hatch"), and concerning his various 1971-79 subdivisions, acts and sales of subparcels of the same 7-acre parent property in Orem, Utah. The three actions CV 157,125, 57,126 (filed by Sykes in 1980), and 63,695 (filed by Hatch in 1983) are completely interrelated with virtually identical claims. They were consolidated together in the court below. In the first two the Sykes sued for breach of contract, damages, recession, wrongful subdivisions, fraud, and several other claims. Hatch's counterclaim

and third-party complaint in CV 57,125 were virtually identical to his 1983 complaint in CV 63,695. Likewise the Sykes' 1983 counterclaim was similar to their earlier complaints, adding fraudulent conveyance and assault.

Hatch settled with Zions Bank for a cash payment. On that basis, plus also as sanctions for failure to prosecute and for abuse of process, the lower court dismissed all of Hatch's claims against all parties.

Then the trial court disposed of all three consolidated cases by dismissing all claims (Addenda A & C), except for its granting summary judgment to Hatch's motion to force delivery to him of Sykes' \$17,000 payment held to the court on the Pierotti house sale to Sykes.

This is an appeal from an order granting Hatch's motion for summary judgment against Sykes which enforced a 1973 Hatch-Pierotti-Sykes sale contract and involuntarily delivered Sykes' additional \$17,000 escrowed cash to Hatch without Sykes ever receiving the underlying property and title insurance policy, and from three orders which dismissed all of Sykes' various claims. Two of those dismissals were sua sponte by the court wholly without warning, as sanctions imposed against Sykes: One was for two occasions of tardiness in filing wherein a suspicion lingered in the court's mind about the excusability of Sykes' illness. The other sua sponte dismissal occurred because that ninth replacement judge was uninformed about which of the consolidated cases Sykes' "presumed missing" discovery prosecution against Ragozzines properly had been filed in.

STATEMENT OF FACTS:

In 1971 the Ragozzines were owners of record of a 7-acre estate containing two houses. Ragozzines via Realtor/purchaser Hatch

improperly subdivided and sold to Hatch, under a Uniform Real Estate Contract ("UREC") the 6.5 acres surrounding their uniquely landscaped "Ragozzine house" (retained by Ragozzines, Parcel 1, and later sold to Sykes in 1975).

Realtor Hatch then further improperly subdivided and sold his portion into three additional parcels, i.e.:

Parcel 2: the "Pierotti house" subdivided into a 70 x 100 ft. lot sold to Pirates via a 1973 UREC. Pierottis re-sold to Iverson and Sykes under a separate 1979 UREC (referred to as the "1973 Hatch/Pierotti/Sykes contract").

Parcel 3: the south-half $3\frac{1}{4}$ -acres, unconditionally optioned to Sykes in 1974, wherein Hatch covenanted to help Sykes buy the Ragozzine house.

Parcel 4: the north-half, conditionally optioned to Sykes in 1974 provided that Sykes timely bought the adjoining Ragozzine house with its integral yard and infrastructures (septic tank, pump house and sprinkler system, rock gardens, lawns, shrubs, etc.. Hatch disputes this contract.

Due to the sales under UREC, the Ragozzines remained owners of record at the time of all these subdivision. But Hatch did the partitions.

Ragozzine house property:

The north-half option required Sykes to timely purchase the Ragozzine house. Hatch's undisputed contract on the south-half required Hatch to "cooperate" in that required purchase of the Ragozzine house. Instead Hatch became a competing bidder against Sykes and thwarted purchase for a year.

Despite Hatch's wrongful interference and bidding and breach of contract, Sykes did timely buy the Ragozzine house parcel. This fulfilled his option condition on the north-half parcel.

In the Ragozzines' 1975 sale to Sykes of their house sub-parcel, Ragozzines warranted the lot boundary lines to be as specifically represented and that all subdivision ordinances and laws had been fully complied with--which both later proved untrue--and Ragozzines guaranteed restitution for any breach.

Later, in several 1979-80 letters (Addenda I & J), Orem City officials threatened to sue then-owner Sykes for wrongful subdivisions of both the Ragozzine house and Pierotti house lots, unless Sykes corrected the several itemized deficiencies or else brought suit to force the responsible subdividers to cure the defects, and said that Orem City will restrict attempts to sell, transfer, or convey them until all code violations are properly cured. Those Orem City demands (see Addendum J) are what initiated the current litigation (contrary to Hatch's current, allegations of extortion claims).

(a) In CV 57,125 plaintiff Sykes claims damages for misrepresentation and illegal subdivision. Ragozzines' Answer denied liability and alleged that their realtor Hatch was the one liable, a possibility that Sykes' initial discovery in CV 57,125 had also raised.

(b) Hatch subsequently joined Ragozzines as parties in CV 57,127 where Sykes had made the identical wrongfully subdivision claims. Discovery and pleadings were then be more efficiently and effectively conducted and filed in CV 57,127, where all parties and issues were together. So Sykes thereafter filed in CV 57,127 all his continuing, aggressive discovery into the subdivision/boundary issue,

including Ragozzines conduct, and into who was liable for violations thereto. The cases were also consolidated together.

(c) Later in the discovery process (after years' of several bankruptcies and procedural delays by Hatch) Sykes concluded that Ragozzines were probably liable under the emerging facts as a matter of law. Sykes' motion for summary judgment and several requests for ruling continued unopposed but without a ruling.

(d) A new sixth-replacement trial judge, Darrin Mower, not being familiar with the history of these interrelated, consolidated cases or with Sykes' extensive and aggressive discovery filings in CV 57,127, looked at the thin CV 57,125 case file and mistakenly concluded that a discovery gap---ostensible, but not in fact real--existed in the CV 57,125 case file which gap was due to a failure to prosecute by Sykes. Without any warning or hearing or motion or opportunity for Sykes to explain--and without being appraised of Sykes' dozens of Ragozzine/Hatch discovery efforts and pleadings timely filed in CV 57,127, that new judge sua sponte dismissed Sykes' action for failure to prosecute, as part of the final order appealed from (Addendum A).

In fact, however, unknown to sixth replacement Judge Mower, Sykes had filed hundreds of discovery pleadings against Ragozzines, including the following four (4) single-spaced pages of extensive discovery pleadings recited in Table I and attached as pages 42-45.

In fact, it was defendants Ragozzines--not Sykes--who failed to defend and failed to produce any discovery. Ragozzines' attorney did attend two of Sykes' discovery depositions and argued against Sykes' claims in various hearings and filed written motions. But

neither Ragozzines nor their counsel ever appeared for or responded to Sykes' several subpoenas, notices of taking Ragozzines' depositions, and never replied or objected to Sykes several requests for admissions, productions of documents, interrogatories, and his motions for summary judgment.

Pierotti house property:

In 1973 Hatch sold this house to Pierottis for \$13,500, under a Utah UREC contract for a deed. In 1979 Pierottis sold the same unimproved house to Iverson and Sykes for \$34,500 under a similar UREC contract for a deed; Sykes cashed Pierottis out with a \$25,500 (75%) down payment, with the balance paid into a Pierotti/Iverson-Sykes escrow @ \$113/mo. to service Pierottis payments to escrow-payee Hatch so long as Hatch was not in default. Sellers Hatch and Pierottis placed original deeds into the escrow for delivery upon Sykes' payment in full.

Sykes was never in default of the payments or contract terms.

Hatch--and thus Pierottis also--were discovered to be continually in multiple default, including several excessive and unauthorized mortgages of the Pierotti house which were continually threatened with foreclosure.

Due to these defaults by Hatch, Pierottis and Iverson/Sykes amended the escrow to deliver Sykes' monthly payments into a safe-keeping account so long as Hatch refused to cure all his defaults. Those safe-keeping funds were later interpleaded into the trial court.

Hatch was not an escrow party, but merely a payee. But after he improperly reviewed the escrow file the whole file disappeared together with its original deeds, and was never seen again.

But the most serious default occurred in 1983 when, in the face of a foreclosure sale, Hatch:

i. Filed his wholly-owned alter ego, University Avenue Development Associates ("UADA"), into bankruptcy at 11:39 a.m. on May 3, 1983 (Addendum F), and then,

ii. the same day, Hatch forged a Warranty Deed which he fraudulently back-dated nearly two years to August 28, 1981, which deed conveyed BOTH the Pierotti house property and the 3-acre north-half orchard to his alter ego, UADA, which Hatch recorded that same day at 4:26 p.m. (Addendum G), and then,

iii. Presented those two fraudulent documents, Addendum F & G, to Zions Bank's attorney at Zions foreclosure sale of the property, demanding that the sale be stayed under the Automatic Stay of the Bankruptcy Court. (Instead, Zions proceeded and sold only the vacant acreage to William Christiansen.)

Thus the record fee title in UADA was no longer in the chain of title of the 1973 Hatch-Pierotti-Sykes UREC contracts for a deed, and none of those parties could compel title from UADA. UADA is still the record fee owner today.

Sykes then notified all parties that under the principal of anticipatory repudiation he was ceasing to make further monthly payments until the above breaches were cured.

Subsequently on several occasions (including in 1983, Feb. 3, March 15, April 3, 1984) Sykes formally tendered prepayment-in-full to Pierottis and Hatch and demanded that they reclaim title and deliver title and the required policy insuring good and marketable title.

When Pierottis and Hatch failed and refused to perform or

even to reply, Sykes demanded rescission of his purchase contract and refund of all payments made.

Since 1980 Pierottis had been a party to these consolidated cases, having been brought in at the beginning as third-party defendants by Hatch.

With leave of Court, in or about Oct. 1989 Sykes filed a third-party complaint against Pierottis in case No. 63,695 and a cross-claim against Pierottis in case No. 57,127, claiming rescission of his 1979 UREC contract and refund of all payments, plus damages.

Hatch and Pierottis claimed that Sykes' real reason for rescission was simply that Sykes did not have the money to make the remaining payments. To prove that their allegations were false, on May 11, 1990, Sykes deposited an additional \$10,900 cash into the safe-keeping account, bringing it up to \$17,140.34 (Addendum H) which was an intentional overpayment by Sykes of \$8,298.44 to preclude further spurious arguments, such as that interest should have been paid notwithstanding the defaults and anticipatory repudiation by sellers Hatch and Pierottis.

Pierottis moved to dismiss based upon erroneous assertion the six-year statute of limitations had expired between when Sykes had deposited his cash payment-in-full and filing his claims.

In actual fact, contrary to Pierottis raw and unsupported assertions, Sykes' back-up payment-in-full was deposited on May 11, 1990, AFTER his filings against Pierottis as proven by the several bank receipts in Addendum H.

None the less, Pierottis' erroneous motions were granted and both of Sykes claims against Pierottis were dismissed by the trial court's ORDER OF DISMISSAL of Feb. 26, 1991 (Addendum C). But the Court gave

absolutely no basis or hint supporting that dismissal and it filed no findings of fact or conclusion of law.

Furthermore, over Sykes' objection, Hatch was granted summary judgment in April 1991 enforcing the 1972 and 1979 sale contracts and ordered Sykes \$17,000 balance which held by the court to be involuntary disbursed to Hatch in exchange for Hatch's reciprocal contract performance and delivery to Sykes of recorded fee title and policy insuring good and marketable title. Instead of returning Sykes' \$8,298.44 over-payment, the Court ordered return of only \$750.

Hatch vacant land:

In 1974 Hatch, via his Equitable Realty Inc., sold two options to Sykes; the one on the south-half was an unconditional option and the north-half was conditional upon Sykes' first purchasing that adjoining and integrally landscaped Ragozzine house. But Realtor Hatch never recorded any notice of either option sale made to Sykes.

Sykes timely performed, exercised, prepaid and tendered on both options and went into possession thereunder. But seller Hatch disputed the validity of both options and refused to timely perform either option. Under threat of suit he eventually conveyed the south-half to Sykes several months later than the 30-days required per contract. But Hatch never performed on the north option. Instead he later mortgaged the north-half to Zions Bank and then fraudulently conveyed it to University Avenue Development Associates ("UADA") as stated above.

However after about 1976 Hatch had never again paid any real property tax and yielded possession and control of both south- and north-halves to Sykes, who did paid the taxes every year as owner.

Now, after 15 years of not paying the required real property taxes, Mr. Hatch is still claiming ownership.

Also, after Sykes exercised his option on the north-half, Mr. Hatch virtually ceased coming on the property. He did not exercise any of the responsibilities of an owner. He did not use the land, or graze it, or fertilize it, or plow or cultivate it, or spray the trees, or pick the berries, etc. Mr. did not take the weekly irrigation turns for all of those years; at some 28 irrigations per year times some 15 years, that is some 420 critical instances of property owner stewardship that he failed to perform, if indeed he considered himself an owner.

Christiansen eventually purchased the north-half at Zions' 1983 foreclosure sale, which Mr. Hatch unsuccessfully tried to block via his admittedly fraudulent and back-dated conveyance of the north-half (and Pierotti house) to his wholly-owned alter-ego UADA.

Cases 57,127 and 63,695 are essentially reciprocal suits. Sykes had claimed specific performance, but the claims now remaining are primarily quiet title, reformation of Hatch's deed, and damages for Hatch's several acts (interference with contract, breach of fiduciary duty, violation of broker law, intentional infliction of emotional distress, wrongful subdivision of the Ragozzine and Pierotti properties, trespass, fraudulent conveyance, assault and battery)

Without notice, motion or warning, the trial courts July 23, 1991, ORDER AND JUDGMENT also dismissed all of Sykes claims against the Hatches as sanctions for one or two minor tardiness in filing minor pleadings, despite prior, timely, detailed letters and notices of Sykes' incapacity from his physicians, which the Court failed to read.

SUMMARY OF ARGUMENTS

1. Sykes consistently and reasonably prosecuted his claims, filing hundreds of pleadings and discovery against Ragozzines; the dismissal was error.

2. The court filed no Findings or Conclusions and provided absolutely no basis for its one-page Feb. 26, 1991, Order of Dismissal with prejudice of Sykes claims against Pierottis, which dismissal ran contrary to the established facts and was abuse of discretion.

3. Granting Hatch's motion for summary judgment for delivery of \$17,000 cash---included \$8,000 over-payment by Sykes---held by the court was error and abuse of discretion in the face of Hatch's and Pierottis' serious defaults over several years while Sykes was never in default, especially where all the non-performances and the continuing un-marketability of title had been wrongfully caused by Realtor-subdivider Hatch, who never did perform his sale contract and who kept both the money and the property, leaving Sykes without either.

4. The dismissal of Sykes' claims against Hatch for being 10 days late in filing a minor, non-prejudicial pleading was abuse of discretion since Sykes was seriously ill with a life-threatening incapacity and the court had detailed advance medical notice of his illness.

ARGUMENT

1. Sykes consistently and reasonably prosecuted his claims, filing hundreds of pleadings and discovery against Ragozzines; the dismissal was error.

Years ago political pundits created a national election issue over the "missing missile gap". Here is the case of the "missing

pleading gap".

The new, sixth-replacement trial judge, David L. Flower, not being familiar with the history of these interrelated, consolidated cases or with Sykes' hundreds of aggressive discovery filings against Ragozzines/Hatch in CV 57,127 (see TABLE 1), looked at the thin CV 57,125 case file and unknowingly and mistakenly concluded that an eight-year discovery pleading gap existed in the CV 57,125 case file and, also unknowingly and mistakenly, that this evidenced a failure to prosecute by Sykes. With no warning nor motion nor hearing, that new judge suddenly and sua spontae dismissed Sykes' action.

But that new Judge was inadvertently mistaken and unaware that his presumed "pleading gap" in fact is not a "gap", as evidenced by the hundreds of pleadings Sykes regularly and justifiably filed in CV 57,127 between June 1981 and June 1990, regarding discovery to Hatch and Ragozzines directed at Sykes' claim of illegal subdivision of the Ragozzine property (see Exhibit A).

Thus Sykes had continuously, diligently and aggressively prosecuted his case against the Ragozzines.

That surprise ruling and presumption by the sixth judge clearly is not true. It is due to mistake and inadvertence and excusable neglect by the newly appointed judge. It is further due to surprise upon Sykes, who had no inkling or warning (there were no such motions) that the court was considering any such order, especially as a Final Order which would resolve and dismiss the entire case without opportunity even for a hearing. Sykes had no opportunity to correct the Judge's misunderstandings.

In actual fact, as detailed in the 4-page single-spaced list of

pleadings in TABLE I, Sykes constantly, actively and aggressively prosecuted his claims against Ragozzines from the moment of its filing. However, for good cause those pleadings are found in the similar case file CV 57,127, Sykes v. Hatch v. Ragozzine, which has the identical allegations of illegal subdivision and which brings all parties together. Hatch was not a party to CV 57,125. But when Hatch immediately joined Ragozzines in CV 57,127 (R. 68) then all parties potentially liable were present there and discovery of the facts disputed between Mr. Hatch and the Ragozzines could only be effectively and efficiently conducted thereafter in CV 57,127. All these cases were consolidated (CV 57,125, 57,127, and 63,695) because they all involved the same property and parties and issues.

SYKES' IDENTICAL CLAIM WAS ALREADY PRESENT IN BOTH CASES:

Sykes' claim relevant herein, the Illegal Subdivision of the Ragozzine Property, occurred because after Sykes bought the "Ragozzine home" from Mr. and Mrs. Ragozzine illegal and improper subdivision violations were discovered.

That identical claim, Illegal Subdivision of the Ragozzine property, existed against both the Ragozzines (as Sykes' Second Cause of Action at Complaint page 4 (Record pg 5; see Exhibit P) in Sykes vs. Ragozzines, CV 57,125,) and also against Howard S. Hatch (as Sykes' Fifth Cause of Action at Complaint page 14-15 (Record pgs 22-23; see Exhibit Q) in Sykes vs. Hatch vs. Ragozzines, simultaneously filed).

Both cases contained that identical Ragozzine Illegal Subdivision claim.

LIABILITY DEPENDED ON DISCOVERY FACTS FROM BOTH HATCH AND RAGOZZINES:

That mutually exclusive claim and its liability pivoted on which

person(s) caused or performed the illegal subdivision and which
person(s) was liable for the land's partition---Mr. and Mrs.

Ragozzine, as owners, or Howard S. Hatch, their licensed Real Estate Agent and Broker of Equitable Realty Inc., who purchased the vacant land entirely surrounding their Ragozzine home.

The Ragozzines answered and denied any responsibility for the said illegal subdivision. They claimed that licensed real estate agent Howard S. Hatch, Broker of Equitable Realty Inc., in fact, was the person who improperly partitioned the land and who designed and set forth the Ragozzine house boundaries and improperly subdivided the property.

Depositions taken in CV 57,125 (Sykes vs. Ragozzine) by plaintiff Sykes of Lee Brooks, Hatch's Equitable Realty's Office Manager, and Clifford D. Foutin, Hatch's Equitable Realty salesman, appeared to confirm the Ragozzines' contention that, indeed, it was realtor/buyer Hatch who had in fact designed and set forth the improper partitions and subdivision.

RAGOZZINES WERE JOINED AS PARTIES IN CV 57,127, THUS PROVIDING THE CITE FOR CONSOLIDATED FUTURE DISCOVERY AGAINST BOTH HATCH AND RAGOZZINES:

At this point, Mr. Hatch interpleaded Mr. and Mrs. Ragozzines into CV 57,127 on May 12, 1981. Thus Sykes' claim for Illegal Subdivision of the Ragozzine Property, and all of its persons potentially liable (Ragozzines and Hatch) were all brought together in one place i.e., in CV 57,127. Thereafter all Sykes' ongoing and very aggressive discovery process shifted from CV 57,125 to CV 57,127, the Sykes vs. Hatch vs. Ragozzine case, where the Ragozzines had been brought in as third-party-defendants by defendant Hatch.

Howard S. Hatch alleged that it was Ragozzines and not him who did the illegal subdivision. Thus Sykes' claim at that time pivoted on that factual dispute between Hatch and Ragozzines as to who set forth the Ragozzine house-lot boundary lines. Those facts had to be resolved and determined via the discovery process, which was justifiably conducted in CV 57,127 because only in CV 57,127 were both Hatch and Ragozzines present as parties.

HATCH AND RAGOZZINES BOTH RESISTED OR REFUSED SYKES' CONSTANT AND AGGRESSIVE DISCOVERY ATTEMPTS:

But it was difficult or impossible to obtain discovery or depositions from Howard Hatch, or from the Ragozzines either. The Case File in CV 57,127 contains several hundred pages of motions to compel discovery and depositions from the Ragozzines and Hatches-- including the subject facts on the pivotal issue of liability for the illegal Ragozzine house subdivision--during 1981 through 1989. That is the very period in which newly appointed Judge Mower, in the subject July 25, 1991 ORDER and Judgment, incorrectly assumes that Sykes was doing nothing to prosecute his claim against Ragozzines.

Finally, after dozens of attempts, Mr. Hatch's deposition was taken on May 6, 1983, wherein he denied on oath that the Ragozzine house subdivision was done by him and he denied responsibility for same.

Then a long history of several bankruptcy petitions and apparently improper or fraudulent delays were caused (as set forth in Sykes' Motion For Sanctions against Hatch) by Mr. Hatch filing into bankruptcy the following parties:

Equitable Reality
Howard Hatch and Associates
University Avenue Development Associates
Howard F. Hatch

Marjorie S. Hatch

Under bankruptcy rules these civil proceedings were necessarily stayed, without election by the other parties thereto. These delays, whether fraudulently or properly incurred, were in any event due to Mr. Howard Hatch, not Dwane Sykes.

MR. HATCH PRECLUDED ANY CONTINUITY OF JUDGES:

These consolidated cases were further complicated and needed continuity was lost by the successive replacement of the following judges:

1. Judge Sorenson
2. Judge David Sam
3. Judge L. Boyd Park
4. Judge George E. Ballif
5. Judge Cullen Y. Christiansen
6. Judge David L. Mower

Most of these Judges were recused upon motion and affidavit of Mr. Hatch.

Ragozzines counsel of record, Kent Barry, also defended in CV 57,127. Mr. Barry filed a Motion for Summary Judgment in CV 57,127 on July 1, 1988 (R. 558-559). Ragozzines' counsel appeared before Judge CHRISTENSEN in the status hearing of July 20, 1988 (R. 565).

SYKES FILED HUNDREDS OF DISCOVERY PLEADINGS IN 1981-89, CONSTANTLY PROSECUTING HIS ILLEGAL SUBDIVISION CLAIM AGAINST RAGOZZINES AND HATCH:

TABLE I recites those hundreds of Sykes' pleading and attempts to take discovery from Mr. Hatch and Ragozzines regarding Sykes' Illegal Subdivision claim on the Ragozzine property. Those efforts constitute the bulk of some 730 record pages in the CV 57,127 case file.

Those pleadings evidence constant and continual efforts by Sykes to prosecute his claims, including those against Ragozzines, and to discover the true facts regarding the Ragozzine Illegal Subdivision. Certainly that was not undue delay or failure by Sykes to prosecute

his claims.

In fact, in contrast to Sykes' constant aggressive prosecution of his Illegal Subdivision claim, the Ragozzines failed to defend and refused all of Sykes' dozen demands to make discovery. Sykes repeatedly noticed up the depositions of Mr. and Mrs. Ragozzine, without their appearance or objection thereto. Sykes even served several Subpoenas upon Ragozzines (supposedly unnecessary for parties). But Sykes never obtained their depositions. Likewise, Ragozzines never answered any of Sykes' several Requests For Admissions, Interrogatories and several Requests for Production.

Based upon his constant discovery and research efforts, Sykes concluded that the Ragozzines were liable as a matter of law. Sykes' Dec. 22, 1990, Motion for Summary Judgment thereto (R. 222-267) was never objected to. The Certified Mail Return Receipt stubs signed by Mrs. Ragozzine were filed showing that Ragozzines had indeed received all of Sykes' pleadings and discovery demands and motions. Sykes' repeated Requests For Decisions (R. 185, 188, 193) were never acted upon by the court.

Thus, Sykes' uncontested Motion For Summary Judgment was the only pending motion when the new judge suddenly and surprisingly dismissed the action without warning and on the basis of wrong presumptions about where the discovery and claim prosecution pleadings had been filed.

In conclusion, the 8-year pleading "gap" which the sixth replacement Judge Mower incorrectly presume! to exist in CV 57,125, is not in fact a "gap". That presumed "gap" in fact is filled by Sykes' hundreds of relevant discovery pleadings found in CV 57,127, having

been filed there after Ragozzines were joined as parties there. Those extensive pleading were filed in CV 57,127 in the interest of judicial economy where all potentially liable parties---Ragozzines and Howard Hatch---could be reached with the same set of discovery pleadings on the identical Illegal Subdivision claim of the Ragozzine house property, which claim is present in both suits.

Thus plaintiff Sykes did prosecute his claims against Ragozzines diligently, continuously and aggressively. The only failure was by Ragozzines to defend and to provide discovery.

The trial court's surprise final Order and dismissal of July 25, 1991, and its underlying incorrect presumption is due to mistake and inadvertence and excusable neglect by the sixth newly-appointed judge. It is further due to surprise upon Sykes, who had no inkling or warning (there were no such motions) that the court was considering any such dismissal order, especially as a Final Order which would terminate and dismiss the entire case against Ragozzine without opportunity even for a hearing. Thus Sykes had no opportunity to correct the Judge's misunderstandings.

2. The court filed no Findings or Conclusions and provided absolutely no basis for its one-page Feb. 26, 1991, Order of Dismissal with prejudice of Sykes claims against Pierottis, which dismissal ran contrary to the established facts and was abuse of discretion.

This leaves Sykes guessing and unable to properly rebut the court's basis--if any--since none is stated in the order.

But the facts above recite that both Pierottis and Hatch were constantly in default and that that neither of them ever performed the contract terms. Despite Sykes early full pre-payment tenders neither

Pierottis or Hatch ever even attempted to deliver good and marketable fee title to Sykes nor the required policy insuring same. Even after Sykes cash prepayment deposited into safe-keeping escrow and later into custody of the court, marketable title and insurance were never delivered to Sykes. That remains true today, even 18 months after the court--over Sykes' objection--ordered that done.

Hatch's wrongful 1973 subdivision had rendered the property title clearly un-marketable. Orem City Planner Wilbur's affidavit confirmed that Orem City would prevent any attempts to sell or transfer either the Pierotti property or the Ragozzine house property until the code violations were cured. Forcing that cure was the point of Sykes' 1980 complaints. All those code violations still remain uncured today making the property still not saleable and the title un-marketable.

In addition, for example, for years the Pierotti property was wrongfully under real threat of foreclosure by several banks.

Pierottis were unjustly enriched by keeping their \$25,500 cash down-payment from Sykes without ever delivering the good and marketable fee title and its insurance policy as required by the contract.

The only possible grounds for the dismissal were merely incorrect assertions of expired statute of limitations after Sykes completed contract payment but before his suit. But the fact is that Sykes completed payments AFTER, not 6 years before, filing suit and then only as a back-up contingency to quash incorrect allegations about Sykes' ability to perform the contract if the sellers were to cure their defaults and deliver fee title and policy insuring good and marketable title.

3. Granting Hatch's motion for summary judgment for delivery of \$17,000 cash---included \$8,000 over-payment by Sykes---held by the court was error and abuse of discretion in the face of Hatch's and Pierottis' serious defaults over several years while Sykes was never in default, especially where all the non-performances and the continuing un-marketability of title had been wrongtully caused by Realtor-subdivider Hatch, who never did perform his sale contract and who kept both the money and the property, leaving Sykes without either.

The trial Court's April 17, 1991, consolidated ORDER ON HATCH'S REQUEST FOR FUNDS states at page 3:

... The HATCH'S claimed that this series of contracts and assignments should be invalidated. Eventually, however, [when they saw Mr. Sykes' \$17,000 back-up cash] they decided to abandon this claim. They made known their decision by filing the above Motion for Summary Judgment....

The Court has determined to grant their Motion for Summary Judgment. This will require a real estate "closing" transaction in order to give final validity to the contracts and assignments. ... The following parties are ordered to be present [at said closing]: Dwane J. Sykes, Howard F. Hatch, Marjorie S. Hatch and a representative Rowley Land Title Co.

At that "closing" on April 26, 1991, the Court delivered the \$17,000 to Hatch, who immediately left and transferred it away and unreachable, and the Court delivered the deeds to the owner of Rowley Land Title Co. to record and issue the policy insuring good and marketable title as required under the contracts.

But Rowley Land Title failed and refuse to record those deeds nor to issue the required title policy because they concluded that the title is not good and marketable for the very reasons stated in Sykes various complaints. The AFFIDAVITS OF VALLEY TITLE OFFICER MARK HALL

(Feb 4, 1990) AND OREM CITY PLANNER JIM WILBUR (Addenda I & J), filed of record in these actions also had previously made clear that the title to both the Pierotti house and the Ragozzine house parcels were neither "good" nor "marketable" and that:

6. So long as said violations continue the two said house lots are not legally subdivided parcels, and Orem City will restrict attempts to sell, transfer, or convey them until all code violations are properly cured.

Today, 18 months later, Hatch still has all the contract payments---plus Sykes' over-payment of \$8,298.44---and Hatch/UADA still own the Pierotti house. Sykes is out both his money and his property and cannot sell it or try to re-convey his losses caused by Hatch and Pierottis.

Though separated from the full payment moneys, Sykes never received fee title nor the title insurance policy required by the contract and as ordered by the court. Seller Hatch has both the contract payment money and the property. Buyer Sykes has neither his money nor the property title.

4. The dismissal of Sykes' claims against Hatch for being 10 days late in filing a minor, non-prejudicial pleading was abuse of discretion since Sykes was seriously ill with a life-threatening incapacity and the court had detailed advance medical notice of his illness.

As stated in page 7 of the Court's 7-25-91 ORDER AND JUDGMENT, the dismissal of Sykes claims against Hatch was as sanctions imposed for his being 10 days late in filing his Summary Of Claims. The seriousness, frequency and reason for that delay will be discuss.

First, the Summary Of Claims was a minor pleading since it merely reiterated again a listing of the claims already filed of record

during the pendency of these cases. That information provided nothing new; it was ALL already in the file and available to all parties in Sykes 1980 complaints and 1983 Counterclaims.

Furthermore, there was no action pending on that Summary of Claims. The 10-day delay in filing same did not prejudice or harm or inconvenience any other party. It was merely a minor pleading of redundant information.

Also, during the 12-year pendency of these actions Sykes and his attorneys had timely filed many hundreds of pleadings. Of those the Court takes issue with the timeliness of only one or two.

During these years Hatch has generally acted pro se without incurring attorney costs. In contrast Sykes was represented by paid legal counsel for the first several years. Those enormous attorney fees paid by Sykes exceeded the amount of his purchase contracts. But as long as Sykes was paying for legal representation Hatch, in effect, held Sykes hostage thereby and no progress was made. Only when Sykes ran out of money he had to continue pro se was that hammerlock broken and real progress made. Sykes former counsel, Mark Robinson, agreed with that assessment. Thus there two very good reasons why Sykes had to proceed without re-hiring counsel.

The reason for Sykes' 10-day tardiness was illness and incapacity. The Court stated that it did not recall for sure whether or not Sykes had claimed that as the reason for the delay, saying at page 7:

Pernaps he claimed that as the reason for not meeting the referenced filing. ... While it is true that Mr. Sykes has brought me a letter from his doctor, the letter tells me nothing about the nature or cause of the illness, only that it is incapacitating. ... I apologize to Mr. Sykes for any

offense I may have caused by my comments herein. I do not mean to offend him by calling him a malingerer. I simply do not know if he is or not. ... Sanctions should be imposed. The sanction imposed is that Mr. Sykes' counterclaim is stricken.

But, Judge Mower had simply forgot that in the subject occasion detailed affidavits and letters from Sykes physicians had indeed been timely filed beforehand documenting Sykes' illness and temporary incapacity and necessary delay, which affidavits answered in detail the nature and cause of his illness--which Judge Mower mis-stated that had not been filed.

In fact, the court's own written Minute Entry for the subject April 29, 1991 hearing stated in detail that the bench received and recited several affidavits from: Tracy A. Hill, M.D., Director of the Intensive Care Unit of Utah Valley Hospital; Duane A. Bevans, M.D., Wynn H. Hemmert, M.D., Darrel R. Stacey, M.D., etc.

Those medical affidavits and letters state that Sykes' illness is "serious and life-threatening" including "a small rupture of the heart aorata, extensive blood clots in the lungs".

In fact that Minute Entry also recites receipt at the Bench of the very 1991 letter from Dr. Darrel R. Stacey which the Court's Order referred to above, but that letter is a cover letter transmitting several additional confirming affidavits, one copy of which is on the back of that very cover letter in the court file.

The Court simply failed to look at or more likely forgot about all those detailed medical explanations before it in multiple copies and from multiple doctors.

Thus it is clear that several months later, on 7-25-91, the Court merely overlooked or "forgot about" those medical explanations it said it needed but did not have, when it was searching for some conceivable

basis upon which to hang a dismissal sanction of Sykes' claims.

Even if there had been no medical documentation filed of record, the court's clear admission that it "simply does not know" if Sykes had medical reason for the subject tardiness constitutes proof of abuse of discretion and--by itself--should be sufficient for reversal.

CONCLUSION

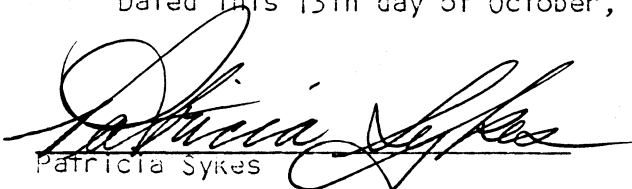
Based on the above facts and reasons and for clear and manifest error and for abuse of discretion by the court below, Cross-appellants pray for:

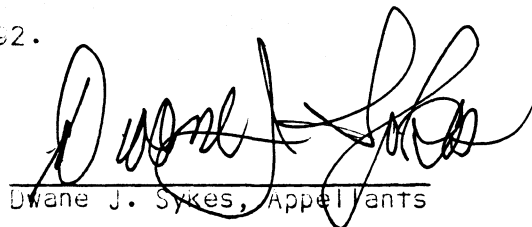
(1) the dismissal of Sykes claims against Ragozzines, on page 2, and dismissal of Sykes' claims against the Hatchs et. al., on pages 7-9 of the trial court's ORDER AND JUDGMENT filed on July 25, 1991 be reversed,

(2) the Courts Feb. 26, 1991 ORDER OF DISMISSAL of Sykes' claims against the Pierottis be reversed, and

(3) the Court's April 17, 1991 ORDER granting Hatch's Motion for Summary Judgment and delivery of funds be reversed with instructions to permit Sykes' rescission of contract for defaults and lack of marketable title which still continue today 20 years after the never-performed sale contract.

Dated this 13th day of October, 1992.


Patricia Sykes


Dwane J. Sykes, Appellants


Dennis L. Sykes


Johnny M. Iverson, Appellants

CERTIFICATE OF MAILING

I certify that I mailed ~~1~~ true and correct copy of the foregoing,
Brief via U.S. Mail, postage prepaid, this ~~13~~th day of ~~Sept.~~ ^{Oct.} 1992, to
the following:

Howard F. Hatch
Marjorie S. Hatch
Howard Hatch & Associates
Spencer F. Hatch, Esq.
843 South 1150 East
Pleasant Grove, UT 84062

Spencer F. Hatch, Esq.
Attorney for UADA, HH&A, Mrs. Hatch
19221 Sherborne Lane
Huntington Beach, CA 92646

Kent M. Barry, Esq.
170 West 100 North
Provo, Utah 84601

Leon Peter Pierotti &
Karen E. Pierotti
595 North 600 West,
Orem, UT 84057

Frederick Jackman, Esq.
1327 S. 300 E.
Orem, Utah 84058

Anthony Ragozzine
Ruth Ragozzine
~~General Delivery~~ 662 W 150 N.
Hurricane, Utah 84737

Sam Primavera, Esq.
Attorney for Christensen
37 E. 400 No.
Provo, UT 84601

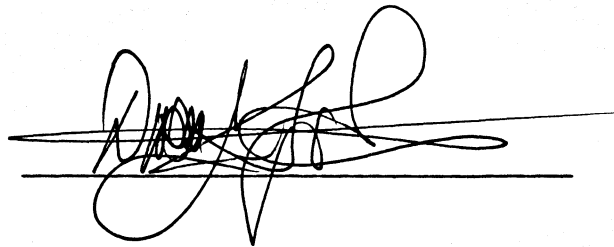
A large, stylized handwritten signature, likely of Spencer F. Hatch, is written over a horizontal line. The signature is in black ink and features a prominent loop and crossbar.

TABLE 1: SYKES' DISCOVERY PLEADINGS & PROSECUTION AGAINST RAGOZZINES/HATCH ON HIS "ILLEGAL SUBDIVISION" CLAIMS ON CV 57,125 (Sykes v. Ragozzines), BUT FILED IN CONSOLIDATED CV 57,127 (Sykes v. Hatch v. Ragozzines).

5-12-81 Amended answer, counterclaim & third party complaint, by defendant Hatch against Ragozzines as third party defendants (Record page 80)

6-4-81 Pl. Motion to strike (R. 88)

6-4-81 Pl. Memorandum of Points and Authorities (R. 90)

6-12-81 letter (R. 94)

6-12-81 Affidavit of Dwane Sykes (R. 96)

6-30-81 Answer of third-party-defendant Ragozzines (R. 105)

+7-22-91 Pl. Motion for temporary restraining order (R. 111)

7-28-81 Temporary restraining order (R. 120)

8-14-81 Pl. Notice of taking depositions (R. 122)

8-17-91 Pl. Subpoena duces tecum (R. 129)

8-18-91 Restraining Order (R. 132)

8-18-91 Request for production of documents (R. 139)

10-13-91 Notice of time for production of documents (R. 141)

10-21-81 Letter re: discovery (R. 263)

2-19-82 Affidavit of Christopher Cannon (R. 157)

8-18-82 Notice of hearing (R. 159)

9-10-82 Minute Entry: Restraining order modified (R. 160)

9-17-82 Order modifying restraining order (R. 162)

11-22-82 Pl. Memorandum in opposition...(R. 176)

12-1-82 Minute Entry: Notice of hearing (R. 183)

12-17-82 Affidavit (R. 186)

1-12-83 Request for oral arguments (R. 190)

12-23-82 Letter from Cannon, re: discovery (R. 186)

1-23-83 Letter, re: discovery (R. 186)

1-12-83 Notice of hearing (R. 196)

2-2-83 Pl. Request for trial setting (R. 226)

2-2-83 Affidavit of Plaintiffs Dwane Sykes (R. 221)

2-2-83 Affidavit of Dean Zapriskie (R. 216)

2-2-83 Pl. Memorandum of points and authorities (R. 199)

2-2-83 Minute entry, re: discovery (R. 226)

2-22-83 Minute entry, re: discovery continued (R. 227)

+2-22-83 Exhibits (R. 228)

2-22-83 Exhibits (R. 229)

3-28-83 Minute entry, re: discovery (R. 226)

3-25-93 Motion for discovery (R. 234)

3-29-83 Notice of time of examination of documents (R. 244)

3-29-83 Pl. Request for production of documents (R. 251)

3-30-83 Motion for sanctions (discovery) (R. 253)

3-29-83 Notice of taking depositions (R. 259)

3-29-83 Motion for extension of time, re: discovery (R. 260)

4-4-83 Notice of taking depositions (R. 262)

4-4-83 Affidavit re: discovery (R. 266)

4-6-83 Motion for enlargement of time (Rt 269)

4-5-83 Notice of hearing: re: discovery (R. 272)

4-7-83 Affidavit (r. 277)

4-11-83 Statement of non-objection (R. 279)

4-11-83 Objection to defendants' motion for discovery (R. 280)

4-11-83 Objection to motion for sanctions (R. 282)

4-11-83 Pl. Motion for appointment of an arbitrator (R.284)

4-11-83 Affidavit re: discovery (R. 286)
 4-11-83 Memorandum in support (R. 294)
 4-11-83 Request for protective order regarding deposition (R. 298)
 4-11-83 Memo opposing extension of time (R. 301)
 4-11-83 Request for protective order (R. 302)
 4-11-83 Objection to notice of hearing (R. 304)
 4-11-83 Affidavit (R. 307)
 4-11-83 Motion for order for appearance pro se or attorney (R. 309)
 4-13-83 Motion for receiver (R. 315)
 4-13-83 Affidavit (R. 314)
 4-13-83 Memorandum of Points & Authorities (R. 312)
 4-14-83 Notice of taking deposition (R. 317)
 4-18-83 Reply memorandum (R. 317)
 4-18-83 Affidavit (R. 326)
 4-18-83 Motion to strike (R. 327)
 4-18-83 memorandum of points and authorities (R. 331)
 4-19-83 letter, re: discovery (R. 332)
 4-20-83 Minute entry: discovery hearing (R. 333)
 4-19-83 Request for protective order (R. 335)
 4-22-83 Pl. Request for decision (R. 341)
 4-26-83 Minute entry; re: discovery (R. 342)
 5-4-83 Minute entry; re: discovery (R. 344)
 5-4-83 Amended notice of taking depositions (R. 346)
 5-4-83 Pl. Motion for sanctions (R. 348)
 5-4-83 Memorandum of Points & Authorities (R. 355)
 5-3-83 Response to request for production of documents (R. 357)
 5-10-83 Amended answer (third) ...& third-party-complaint (R. 384)
 5-9-83 Motion to strike (R. 385)
 5-9-83 Memorandum of Points & Authorities (R. 408)
 5-10-83 Certificate of Service (Rt 410)
 5-13-83 Affidavit of Green re discovery (R. 412)
 5-13-83 Affidavit re discovery (R. 417)
 5-13-83 Affidavit re discovery (R. 420)
 5-13-83 Motion for order compelling discovery (R. 428)
 5-13-83 Memorandum of points & authorities (R. 428)
 5-16-83 motion for reconsideration & clarification (R. 436)
 5-16-83 Memorandum of points & authorities (R. 434)
 5-16-83 Joinder of Motions (R. 438)
 5-23-83 Memorandum in opposition (R. 449)
 6-10-83 Answer to amended cc (r. 451)
 7-7-83 letter re: discovery (R. 452)
 8-23-83 Notice of hearing (R. 454)
 8-31-83 Affidavit (R. 456)
 9-13-83 Affidavit (R. 460)
 9-16-83 Subpoena duces tecum (R. 462)
 8-26-83 Minute entry: further review (R. 464)
 9-23-83 Minute entry: (R. 465)
 9-17-83 Letter (R. 466)
 10-18-83 Minute entry, Re: discovery hearing (R. 467)
 10-25-83 Exhibits (R. 468)
 10-25-83 Minute entry, further hearing (R. 470)
 10-25-83 Minute entry, oral arguments (R. 472)
 11-4-83 Memorandum (R. 479)
 11-4-83 Affidavit of Sykes (R. 484)
 11-4-83 Motion to stay and order (R. 486)

11-7-83 Affidavit, re: discovery (R. 493)
 11-7-83 Bankruptcy re: Howard Hatch & Associates (r. 496)
 11-18-83 Letter re discovery (R. 500)
 12-1-83 Memorandum in response re: discovery (R. 509)
 1-23-84 Letter, proceedings automatically stayed, Bankruptcy (R. 518)
 1-13-84 Notice of Hearing (R. 519)
 2-27-84 Bankruptcy exhibits (R. 520)
2-27-84 Minute Entry by Judge David Sam staying all action during
pendency of Howard Hatch bankruptcy (R. 521)

(FOUR-YEAR COURT-ORDERED BANKRUPTCY STAY IN ANY PROCEEDINGS, 1984-88)

1-11-88 Recusal of Judge L. Boyd Park (R. 530)
 1-11-88 Case re-assigned to Judge George E. Ballif (R. 531)
 2-10-88 Motion for summary judgment (R. 551)
 2-29-88 Recusal of Judge Ballif (R. 553)
 3-3-88 Case reassigned to Judge Cullen Y. Christensen
 5-3-88 Ruling (R. 556)
7-1-88 Motion for sum jmt by Barry for Ragozzines (R. 558-59)
 7-13-88 Objection to [Ragozzines'] motion for sum jmt (R. 563)
 7-20-88 Minute entry of hearing and oral arguments, with
 Ragozzines' counsel-of-record present (R. 565)
 7-22-88 Motion for sanctions (R. 570)
 7-22-88 Affidavit of Howard Hatch (R. 572)
 8-10-88 Notice to submit matter for decision (R. 576)
 8-12-88 Sykes' Affidavit in objection... (R. 582)
 8-12-88 Objection to Hatchs' motion (R. 585)
 8-31-88 Ruling (R. 587)
 10-21-88 Letter notice of mailing address (R. 592)
 11-14-88 Notice to resubmit matter for decision (R. 594)
 11-29-88 Ruling (R. 595)
 1-6-89 Hearing vacated (R. 596)
1-6-89 Motion (by Hatch) recusal Judge Christiansen (R. 597)
 1-6-89 Affidavit of Howard Hatch
 1-13-89 Certificate of duplicate service by Sykes (R. 613)
 1-23-89 Ruling re: recusal (R. 615)
 1-24-89 Ruling re: recusal (R. 617)
 2-10-89 Certificate of good faith, by Hatch re: recusal (R. 619)
 2-17-89 Minute entry denying (Hatchs') motion for recusal (R. 625)
 5-10-89 Notice of withdrawl (R. 621)
 5-1-89 Notice of withdrawl & cert. of good faith (R. 622)
 6-6-89 Order on outstanding motions & case review hearing (R. 628)
 6-6-89 Notice of hearing (R. 630)
 6-21-89 Withdrawl of counsel, by Robinson for Sykes (R. 633)
 7-27-89 Hearing vacated (R. 634)
 10-3-89 Notice of taking depositions duces tecum of Hatchs (by
 Sykes) (R. 647)
 10-3-89 Notice of taking depositions duces tecum of Ragozzines (by
 Sykes) (R. 670)
 10-3-89 Subpoena Ducas Tecum to Anthony Ragozzine and Ruth Ragozzine
 (by Sykes) R. 667)
 10-18-89 Objections to Sykes' interrogatories & request for
 production & taking depositions (R. 672)
 4-9-90 Notice of (Hatchs') Bankruptcy dismissal, by Sykes (R. 679)
 4-12-90 2.8 request for decision on return of Sykes files held by

the court (R. 681)

- 5-22-90 Second 2.8 request for decision on return of Sykes files held by the court (R. 715)
- 5-22-90 Certificate of service of Sykes' request for admissions, interrogatories and production of documents (R. 717)
- 7-7-90 Order for return of Sykes' files held in custody of the court (R. 727)
- 7-8-90 Motion to enforce the court's order (by Sykes, re: Howard Hatch) (R. 730)

Judge Mower's appointment in 1990 (following the recusals of Judges Sam, Sorenson, Park, Baliff, and Christensen)

- 5-18-90 Notice of Judicial Appointment of consolidated cases to Judge David L. Mower pro tem (R. 685)
- 6-7-90 Status Conference: ordering consolidation and a "hold" on all matters for 90 plus 120 day deadlines to pass regarding stipulations (R. 722)
- 6-27-90 Order on (Sykes^o) motions in Sykes v. Ragozzine CV 57,125 (R. 732)
- 7-11-90 Order re: Permanent Bar Dates (R. 738)

[end of TABLE I]

DISTRICT COURT, UTAH COUNTY, STATE OF UTAH

Howard F. Hatch, et al.,
Plaintiffs,

vs.

Zions First National Bank, et al.,

Defendants.

Dwane J. Sykes,
Plaintiff,

vs.

Anthony Raggozzine and Ruth
Raggozzine,

Defendants.

Dennis L. Sykes, et al.,
Plaintiffs,

vs.

Howard F. Hatch, et al.,
Defendants.

ORDER and JUDGMENT

Case number, 63,695

Case number 57,125

Case number 57,127

Judge David L. Mower

This order and judgment relates to consolidated cases being handled by the undersigned by assignment. The case numbers are 57,125, 57,127 and 63,695.

7-23-91
filed 7-25-91
Dismissing all
claims & all
parties from
all actions.

ADDENDUM "A"
EXHIBIT "G"

DECISION - CASE NUMBER 57,125

The Court intends to dismiss this case for failure to prosecute.

ANALYSIS - CASE NUMBER 57,125

Dwane J. Sykes and Patricia Sykes started this case in 1981 by filing a complaint against Anthony Raggozine and Ruth W. Raggozine. The defendants answered on April 28, 1981.

Plaintiffs noticed up some depositions for May 6, 1981.

The next pleading in the file is a motion to consolidate made by plaintiffs in 1989, a time passage of eight years.

I have seen nothing to justify such a delay. While it is true that there were other lawsuits concerning this property and its other owners and claimants, such should not have delayed the plaintiffs in moving forward with their claims against the Raggozines.

DECISION - CASE NUMBER 63,695

The Court intends to dismiss this action as to all pending parties, claims or motions.

ANALYSIS - CASE NUMBER 63,695

I. Plaintiffs' case.

Howard F. Hatch, Marjorie S. Hatch and University Avenue Development Associates started this lawsuit on May 9,

1983 by filing a complaint. An amended complaint followed on August 3, 1983. Named as defendants were Zions First National Bank, Dwane J. Sykes, Virginia Flynn, and William Christiansen.

A brief and perhaps oversimplified statement of plaintiffs' claims in the amended complaint is:

- A. They were the owners and trustors of a piece of land which was scheduled to be sold at a trustee's sale;
- B. Virginia Flynn had agreed to rescue the plaintiffs from the sale;
- C. Mr. Sykes scared her off during a meeting at the trustee's lawyer's office; and
- D. The land was sold.

Service of process was never made on Virginia Flynn. As a result, there is no cause of action against her.

During the years this case has been pending, other third parties were brought in, but the causes against them have been disposed of, with the exception of \$750.00, which will be discussed more fully, below.

In any event, the amended complaint remained as the written statement of plaintiffs' claims until June 11, 1990 when they signed a stipulation with Zions First National Bank (the trustee referred to above). The stipulation caused the amended complaint to be changed in several ways.

To illustrate the changes, a "before and after" view may be helpful. Before the stipulation, the amended complaint contained five different prayers for relief, to-wit:

1. to set aside that certain conveyance dated May 4, 1983, entitled trustee's deed, ..., declaring it to be null and void, thereby returning the property to the plaintiffs, or in the alternative to impose a constructive trust over said property until the rights of the parties can be established by this court;
2. for equitable relief under the plaintiffs' complaint requiring defendant Zions to allow the plaintiffs a reasonable time in which to arrange for the money necessary to cure the default and to obtain a reconveyance of the trust deed;
3. for punitive damages against the defendant Zions and Sykes of \$450,000.00 for willful and malicious conduct in connection with the transaction which is the subject of this complaint;
4. for actual damages of \$150,000.00 in the event the property is lost by the plaintiffs through the actions of the defendants;
5. and the costs of this action, including a reasonable attorney's fee together with such other relief as the court may deem just and proper.

After the stipulation, the amended complaint contained three different prayers for relief, i.e.:

1. for punitive damages against defendant Sykes of \$450,000.00 for willful and malicious conduct in connection with the transaction which is the subject of this complaint;

2. for actual damages of \$150,000.00 in the event the property is lost by the plaintiffs through the actions of the defendants;
3. and the costs of this action, including a reasonable attorney's fee together with such other relief as the court may deem just and proper.

The stipulation was approved by the Court. The resulting order not only dismissed Zions as a defendant but also removed certain language from the amended complaint relating to claims for the land or the way in which it was sold at the trustee's sale. This quote from the stipulation is illustrative:

Plaintiffs ... agree that the trustee's sale ... was a bona fide, arm's length, non-collusive, valid and binding Trustee's Sale. ... Plaintiffs ... waive and abandon any ... claims and defenses ... which ... challenge or dispute the validity ... of the Trustee's Sale or the title of the purchaser at the Trustee's Sale.

Upon William Christiansen's motion, the lawsuit was dismissed as against him. He was the purchaser at the trustee's sale. Plaintiffs had agreed to give up all claims against him.

For the same reason, I am satisfied that plaintiffs' remaining causes of action against Mr. Sykes must also fail. Plaintiffs agreed to abandon any claims to the validity of the trustee's sale.

Plaintiffs' remaining causes of action are based on the "loss of property" language in the prayer of the amended complaint.

If "loss of property" means slander of title, then plaintiffs can recover no actual damages. Plaintiffs must hold some interest in the property in order to claim that it has been slandered.

If "loss of property" is taken to mean that which is suggested by the words themselves, then plaintiffs cannot recover damages. So far as they are concerned, the property was lost at the trustee's sale. They have waived any claimed irregularity therein.

Plaintiffs also claim punitive damages. However, punitive damages are derivative in nature and cannot be awarded in the absence of actual damages.

When the possibility of actual damages is gone, then the claim for punitive damages evaporates.

Plaintiffs' amended complaint, as it now stands, does not state a cause of action. Consequently, it must be dismissed.

II. Defendant's case.

Defendant filed a counterclaim in May of 1984. It contains eleven causes of action.

On February 4, 1991 a hearing was held in this case. Mr. Sykes was present at that hearing. He was ordered to prepare a list of all conceivable claims that he had against anyone in the three different cases, i.e., numbers 63,695 or 57,127 or 57,125. He was ordered to submit the list by a certain date and to send copies.

The deadline for filing the list was April 19, 1991. The reason for the deadline was that a further hearing was scheduled for April 29, 1991. Filing the list before the next hearing would give the Court, the parties and counsel a chance to review it in advance.

Mr. Sykes did not meet the deadline. He brought the list with him to the hearing on April 29, 1991.

This was not the first deadline Mr. Sykes missed. Throughout the time that the undersigned has been involved in these cases, Mr. Sykes has claimed that on various occasions he becomes ill and incapacitated. Perhaps he claimed that as the reason for not meeting the referenced filing deadline.

However, I have never been totally satisfied that such episodes are true illnesses, in the sense that they are beyond his control. While it is true that Mr. Sykes has brought me a letter from his doctor, the letter tells me nothing about the nature or cause of the illness, only that it is incapacitating.

Mr. Mark F. Robinson, Mr. Sykes' former lawyer in these cases, did tell me about his observations of Mr. Sykes when he is ill. Mr. Robinson told me of Mr. Sykes' being unable to speak or respond and of being unable to locate necessary documents. Mr. Robinson could not tell me anything about the cause of the Mr. Sykes' incapacity, except that it was possibly stress-related.

Court hearings are extremely stressful. Mr. Sykes has never failed to appear at any hearings because of illness. I have watched him during the hearings. He represents himself. He is well-dressed, well-groomed, articulate and intelligent. He brings a great volume of papers with him to court. He is always able to locate and handle documents when the need arises.

I apologize to Mr. Sykes for any offense I may have caused by my comments herein. I do not intend to offend him by calling him a malingerer. I simply do not know if he is or not.

If he is, then sanctions are appropriate. If he is not, then he should have hired counsel to assist him. He has not done so. Sanctions should be imposed.

The sanction imposed is that Mr. Sykes' counterclaim is stricken.

DECISION - CASE NUMBER 57,127

The Court intends to dismiss this case as a sanction

against Mr. Sykes, since it is the same as his counterclaim in number 63,695.

ANALYSIS - CASE NUMBER 57,127

Dennis L. Sykes, Dwane J. Sykes, Patricia Sykes, and Johnny Iverson started this lawsuit in May of 1981 by filing a complaint. Named as defendants were: Howard F. Hatch, Marjorie S. Hatch, Howard Hatch and Associates, and Equitable Realty Inc.

At the time of filing, plaintiffs were represented by counsel. However, their counsel later withdrew.

Since the case has been assigned to me, I have never met Dennis L. Sykes nor Patricia Sykes nor Johnny Iverson. Mr. Dwane Sykes has told me that he represents their interests, but, of course, he is not an attorney and cannot speak for them.

Nevertheless, it is fairly easy for me to conclude that Dwane Sykes is the real party in interest, not only because of what he says, but also because, in spite of notices to the other plaintiffs, no one but Mr. Dwane Sykes ever appears at court hearings.

The complaint in this case is the same cause of action as the counterclaim in case number 63,695. Consequently, the same sanction should be imposed. The complaint in this case is stricken.

WHAT TO DO WITH THE \$750?

Earlier in these proceedings, Mr. Sykes was ordered to deposit certain funds with the Clerk. He complied with that order by giving the Clerk control over an interest-bearing bank savings account with a balance of more than \$15,000.00. At the Court's direction, the Clerk eventually disbursed all but \$750.00 of those funds.

It appeared that at least \$500.00 of the account balance belonged to Mr. Sykes. At the time the Clerk was directed to disburse funds, I allowed a contingency balance for any interest which may have accrued. This is the source of the \$750.00.

Since all claims in these cases are being dismissed today, the ownership of the \$750.00 is left at issue.

Dwane J. Sykes is awarded the \$750.00. However, this order is contingent. The contingencies are: (1) the arrival of September 1, 1991, and (2) there being no other written claims to the money in the Court's file on that date.

If the contingencies are met, then the Clerk is authorized and directed to disburse the funds, together with any accrued interest, to Mr. Sykes. If the contingencies are

Hatch v. Zions, et al., 63,695, 57,125 and 57,127
Order AND Judgment, Page -11-

not met, the Clerk is directed to consult with the undersigned
and to set the matter for further hearing.

Dated this 23 day of July, 1991.

BY THE COURT:



David L. Mower
Judge

MAILING CERTIFICATE

I hereby certify that on the 23rd day July,
1991, I served a full, true and correct copy of the within and
foregoing Order and Judgment on the following by depositing a
copy in the U. S. Mail, postage prepaid, addressed to:

Spencer F. Hatch, 19221 Sherborne Lane,
Huntington Beach, CA 92646

Howard F. Hatch, 843 South 1150 East, Pleasant
Grove, Ut 84063

Sam Primavera, 37 East 400 North, Provo, Utah
84601

Dwane Sykes, 1511 South Carterville Road, Orem,
Utah 84068

Ruth Ragozzine, 662 West 190 North, Hurricane,
Ut 84737



IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

HOWARD F. HATCH, MARJORIE S.
HATCH AND UNIVERSITY AVENUE
DEVELOPMENT ASSOCIATES, A
Limited Partnership,

Plaintiffs,

-vs-

ZIONS FIRST NATIONAL BANK,
DWANE J. SYKES, VIRGINIA
FLYNN and WILLIAM
CHRISTIANSEN, d/b/a ARAPIAN
VALLEY LIVESTOCK CO.,

Defendants.

CIVIL NO. 63,695

Hon. David L. Mower

DWANE J. SYKES,

Plaintiff,

-vs-

ANTHONY RAGOZZINE and
RUTH RAGOZZINE,

Defendants.

CIVIL NO. 57,125

DENNIS J. SYKES, DWANE J. SYKES,
ET AL.,

Plaintiffs,

-vs-

HOWARD F. HATCH, ET AL.,

Defendants.

CIVIL NO. 57,125

4-17-91
Sum. Jmt for K.H.
on \$17K

"B"

ORDER ON MOTION FOR SUMMARY JUDGMENT

(case number 57,127, motion filed on or about
July 23, 1990, renewed on or about
December 21, 1990)

The above case was considered by the Court on March 26, 1991. The hearing, while on the record, was conducted by way of telephone conference call. The Court was in Richfield, Utah; the voices of Howard Hatch and Dwane Sykes were audible on a speakerphone. The record was made by electronic recording equipment.

An additional telephone hearing was conducted on April 2, 1991

The hearings were held because of a motion for summary judgment made by Howard F. Hatch and Marjorie S. Hatch on or about July 23, 1990 and renewed on December 21, 1990 in case number 57,127 (Sykes v. Hatch).

In order to give this order some perspective and readability, a recital of some history would be useful. Even though the Sykeses are listed as plaintiffs and the Hatches as defendants in that case, both sides have made various claims and counterclaims against each other.

Part of the case has to do with a series of contracts and assignments starting with the Hatches and ending with the

Sykeses. The Hatches claimed that this series of contracts and assignments should be invalidated for failure to recognize their first right of refusal.

Eventually, however, they decided to abandon this claim. They made known their decision by filing the above Motion for Summary Judgment. If the various contracts and assignments are valid, the consequences are that Dwane J. Sykes and Patricia Sykes are the owners of a certain parcel of land.

On November 1, 1990 a hearing was held in these cases. The Hatches renewed their motion for summary judgment because of the order made at that hearing.

The Court has determined to grant the Motion for Summary Judgment. This will require a real estate "closing" transaction in order to give final validity to the contracts and assignments.

The Clerk of the Court and the Trial Court Executive are directed to conduct this transaction, which may be done at an agreeable time and place. Failing an agreement, it will be done on April 26, ~~1991, 9:00 AM~~, 125 South 100 West, Provo, UT. The following parties are ordered to be present: Dwane J. Sykes, Howard F. Hatch, Marjorie S. Hatch and a representative from Rowley Land Title Company.

The Clerk is to be prepared to deliver funds to Mr. and

Mrs. Hatch. The amount is to be equal to the balance in the interest bearing bank account minus \$750.00 (I will explain below the reason for the deduction.). The Clerk is to be prepared to deliver two deeds, which are: (1) a warranty deed dated July 7, 1990 from University Avenue Development Associates, a limited partnership, grantor, to Leon Peter Pierotti and Karen E. Pierotti, husband and wife, grantees; and (2) a warranty deed dated March 21, 1991 from Leon Peter Pierotti and Karen E. Pierotti, grantors, to Johnny M. Iverson grantee.

The reason for the \$750.00 deduction is this: Mr. Sykes is the assignee of the Pierotti/Iverson sales contract. Payments under this contract were paid into an interest bearing account (which is now under the Court's control.) Mr. Sykes claims that at one point he paid more money into this account than was required by the contract.

The amount of the claimed over-payment is \$500.00. This amount is small in relation to the total funds in the account, i.e., more than \$17,000.00. Should Mr. Sykes be successful in proving the overpayment, he would be entitled to a portion of the accrued interest.

I have chosen to reserve \$750.00 to cover any potential claim that Mr. Sykes may have in these funds.

I have determined that deed #1 described above is in the Court's office in Richfield, Utah. Consequently, it is being sent to the Clerk along with the original copy of this order.

Dated: 4/17/1991



David L. Mower

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Order on Mr. Christiansen's motions (1) to dismiss and (2) for attorney's fees was served by U. S Mail, on the 17th day of April, 1991, on the following:

Spencer F. Hatch, 19221 Sherborne Lane,
Huntington Beach, Ca. 92646

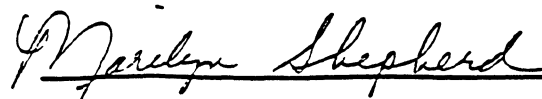
Howard F. Hatch, 843 South 1150 East, Pleasant
Grove (84062)

Sam Primavera, 37 East 400 North, Provo, Utah
(84601)

Dwane Sykes, 1511 South Carterville Road, Orem,
Utah (84058)

Ruth Ragozzine, General Delivery, Hurricane, Utah
(84737)

T. McKay Stirland, Nielson & Hill, Suite 200,
3319 North University Avenue, Provo, Utah (84604)



Richard L. Hill, (1491)
T. McKay Stirland, (5800)
NIELSON, HILL & FISHER
Jamestown Square, Suite 200
3319 No. University Avenue
Provo, Utah 84604
Telephone: (801) 375-6600
Attorneys for Third-Party Defendants PIEROTTIS

IN THE FOURTH JUDICIAL DISTRICT COURT
COUNTY OF UTAH, STATE OF UTAH

HOWARD F. HATCH, MARJORIE S.
HATCH, et al.,

Plaintiff,

vs.

ZIONS FIRST NATIONAL BANK,
et al.,

Defendant.

ORDER OF DISMISSAL

signed 2-26-91

CIVIL NO. 63,695

DWANE J. SYKES,

Plaintiff,

vs.

ANTHONY RAGOZZINE and RUTH
RAGOZZINE,

Defendant.

CIVIL NO. 57,125

DENNIS J. SYKES, DWANE J. SYKES,
et al.,

Plaintiff,

vs.

HOWARD F. HATCH, et al.,

Defendant.

CIVIL NO. 57,127

"C"
EXHIBIT

A scheduling conference and hearing on all pending motions was held in the above-captioned cases on February 4, 1991, before the Honorable David L. Mower.

The Court having considered the Pierottis' Motion To Dismiss Third Party Complaint (Case No. 63,695), Motion For Rule 11 Sanctions (Case No. 63,695) and Motion to Vacate and Dismiss Plaintiff's (Sykes) Verified Cross-Claim With Prejudice (Case No. 57,127) and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Pierotti's Motion for Rule 11 Sanctions is hereby denied that Pierottis' Motion to Dismiss Third Party Complaint and Motion To Dismiss Plaintiff's Verified Cross-Claim is hereby granted, dismissing with prejudice all claims asserted by Dwane J. Sykes, et al. against Leon Peter Pierotti and Karen E. Pierotti in the above-captioned cases, the parties to bear their respective attorneys' fees and costs.

DATED this 26 day of February, 1991.

BY THE COURT:



District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I personally mailed a true and correct copy of the foregoing on this 4th day of March, 1991, by first-class U.S. mail, postage prepaid, to the following:

Dwane J. Sykes
1511 So. Carterville Rd.
Orem, Utah 84058

Brian E. Noble
5580 LaJolla Blvd.
LaJolla, California 92037

Arron Jepson
8 East 300 South
Salt Lake City, Utah 84111

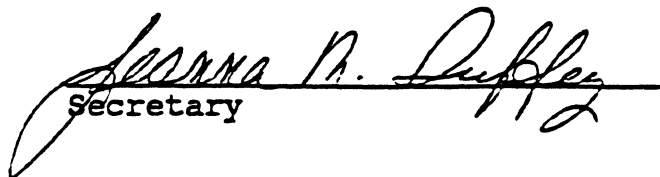
Howard F. Hatch
843 South 1150 East
Pleasant Grove, Utah 84111

Spencer F. Hatch
19221 Sherborne Lane
Huntington Beach, California 92646

John A. Beckstead
Mark H. Egan
CALLISTER, DUNCAN & NEBEKER
Suite 800 - Kennecott Building
Salt Lake City, Utah 84133

Frederick Jackman, Esq.
1327 South 800 East
Orem, Utah 84058

Anthony Ragozzine
Ruth Ragozzine
662 West 150 North
Hurricane, Utah 84737


Secretary

COPY
FILED IN
4TH JUDICIAL DISTRICT COURT
CLARK
AUG 23 1 40 PM '91

Dwane J. Sykes,
1511 So. Carterville Rd.
Orem, UT 84058
ph. 801-225-0686 [appeal.notice]

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH

DWANE J. SYKES,
Plaintiff,
vs.

NOTICE OF APPEAL

ANTHONY RAGOZZINE and RUTH RAGOZZINE,
Defendants

Civil No. 57,125
Judge David L. Mower
Date: August 22, 1991

HOWARD F. HATCH, et. al.
Plaintiffs,
vs.

ZIONS FIRST NATIONAL BANK, et. al.
Defendants

Civil No. 63,695

SYKES, et. al.,
Plaintiffs,
vs.

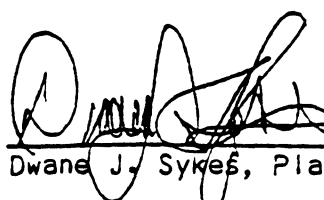
HOWARD F. HATCH, et. al.
Defendants

Civil No. 57,127

DWANE J. SYKES, plaintiff in above Case No. 57,125, Sykes vs.

Raghozzines, hereby appeals to the Utah Court of Appeals, and/or to the Utah Supreme Court, that consolidated ORDER and JUDGMENT by Judge (by assignment) David L. Mower, dated July 23, 1991, served by mail, and entered and filed herein on July 25, 1991, in the Fourth Judicial District Court of Utah County, State of Utah.

Date: August 22, 1991


Dwane J. Sykes, Plaintiff/Petitioner

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing, U.S. -Mail, postage prepaid, this 22nd day of August, 1991, to the following:

A D
11

Howard F. Hatch
Marjorie S. Hatch
Howard Hatch & Associates
Spencer F. Hatch, Esq.
843 South 1140 East
Pleasant Grove, UT 84062

Spencer F. Hatch, Esq.
19221 Sherborne Lane
Huntington Beach, CA 92646

Judge David L. Mower
Sixth Circuit Court
250 North Main St.
Richfield, UT 84701

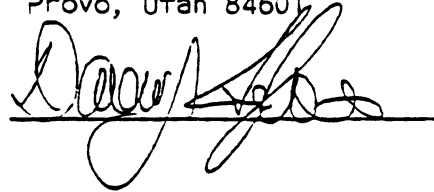
Kent M. Barry, Esq.
170 West 100 North
Provo, Utah 84601

Frederick Jackman, Esq.
1327 S. 800 E.
Orem, Utah 84058

Ruth Ragozzine
662 West 150 North
Hurricane, Utah 84737

Sam Primavera
37 East 400 No.
Provo, UT 84601

Kent M. Barry, Esq.
Young, Backland, Harris, & Carter
350 East Center St.
Provo, Utah 84601

A handwritten signature in black ink, appearing to read "Kent M. Barry", is written over a horizontal line.

Howard F. Hatch
843 South 1150 East
Pl. Grove, UT 84062
Ph: 785-4818/785-5013

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH

HOWARD F. HATCH, MARJORIE S.
HATCH, & UNIVERSITY AVENUE
DEVELOPMENT ASSOCIATES, A
Limited Partnership,

Plaintiffs,

vs.

DWANE J. SYKES, and WILLIAM
CHRISTIANSEN, d/b/a
ARAPIAN VALLEY LIVESTOCK CO.,

Defendants.

NOTICE OF APPEAL

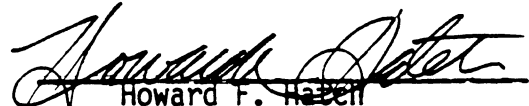
Civil No. 63,695

Judge David L. Mower

Supreme Ct
W8. 910417

The Plaintiffs, Howard F. Hatch and University Avenue Development Associates, hereby give notice of their intention to appeal to the Utah Supreme Court the interlocutory order dated April 17, 1991, dismissing Defendant William Christiansen, and the final Order and Judgment dated July 23, 1991, signed by the Honorable David L. Mower of the above entitle court, which final order was filed July 25, 1991, and dismissed "all pending parties, claims or motions" in the above denominated case.

Respectfully submitted this 26th day of August, 1991.


Howard F. Hatch



Howard F. Hatch, Gen. Partner
University Ave. Dev. Assoc.

EXHIBIT D-2

FILED IN
4TH JUDICIAL DISTRICT COURT
STATE OF UTAH
SEP 6 3 48 PM '91

COPY

Dwane J. Sykes,
1511 So. Carterville Rd.
Orem, UT 84058
ph. 801-225-0686

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH

HOWARD F. HATCH, et. al.
Plaintiffs,
vs.

AMMENDED NOTICE OF APPEAL

ZIONS FIRST NATIONAL BANK,
DWANE J. SYKES, et. al.
Defendants

Civil No. 63,695

DENNIS L. SYKES, DWANE J. SYKES, et. al.,
Plaintiffs,
vs.

HOWARD F. HATCH, et. al.
Defendants

Civil No. 57,127

DWANE J. SYKES and PATRICIS SYKES,
Plaintiffs,
vs.

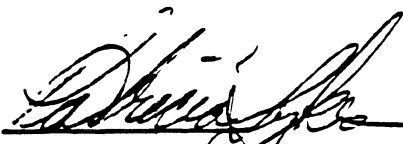
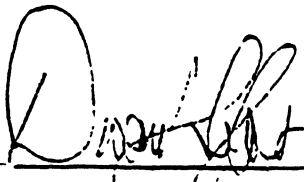
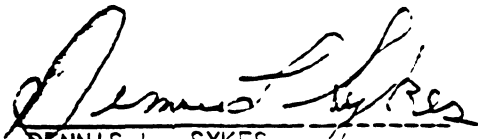
ANTHONY RAGOZZINE and RUTH RAGOZZINE,
Defendants

Civil No. 57,125
Judge David L. Mower
Date: Sept. 5, 1991

DWANE J. SYKES, PATRICIA SYKES, DENNIS L. SYKES, and JOHNNY IVERSON,
plaintiffs and/or defendants, respectfully, in the three above cited
consolidated cases 57,125, 57127, and 63,695, hereby appeal to the Utah
Supreme Court, that consolidated ORDER and JUDGMENT in the said three cases
by Judge (by assignment) David L. Mower, dated July 23, 1991, served by
mail, and entered and filed herein on July 25, 1991, in the Fourth Judicial
District Court of Utah County, State of Utah. This ammends that Notice Of
Appeal filed in said Court on August 23, 1991.

Date: Sept. 5, 1991

"E"
EXHIBIT


PATRICIA SYKES
Dwane U. Sykes, Appellants
DENNIS L. SYKES
JOHNNY M. IVERSON, Appellants

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing, U.S.
-Mail, postage prepaid, this 5th day of Sept. 1991, to the following:

Howard F. Hatch
Marjorie S. Hatch
Howard Hatch & Associates
Spencer F. Hatch, Esq.
843 South 1140 East
Pleasant Grove, UT 84062

Spencer F. Hatch, Esq.
19221 Sherborne Lane
Huntington Beach, CA 92646

Judge David L. Mower
Sixth Circuit Court
250 North Main St.
Richfield, UT 84701

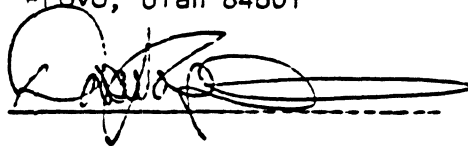
Kent M. Barry, Esq.
170 West 100 North
Provo, Utah 84601

Frederick Jackman, Esq.
1327 S. 800 E.
Orem, Utah 84058

Ruth Ragozzine
662 West 150 North
Hurricane, Utah 84737

Sam Primavera
37 East 400 No.
Provo, UT 84601

Kent M. Barry, Esq.
Young, Backland, Harris, & Carter
350 East Center St.
Provo, Utah 84601



May 3 11:39 '83

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: **63M-01231**
Bankruptcy No. Chapter 11

UNIVERSITY AVENUE DEVELOPMENT
ASSOCIATES, A Utah Limited
Partnership

VOLUNTARY PETITION FOR
BANKRUPTCY

Debtor.

RELIEF ORDERED

Tax Identification No. 87-6157686

1. Petitioner's mailing address is 460 N. Univ. Ave.,
Provo, Utah 84601.

2. Petitioner has had his principal place of business
within this district for the preceding 180 days.

3. Petitioner is qualified to file this petition and
is entitled to the benefits of the Bankruptcy Code as a
voluntary debtor.

WHEREFORE, Petitioner prays for relief as a voluntary
debtor under Chapter 11 of the Code.

DATED this 3rd day of May, 1983.

Howard F. Hatch
Howard F. Hatch, General Partner
UNIVERSITY AVENUE DEVELOPMENT ASSOC.

I, HOWARD F. HATCH, the petitioner named in the fore-
going petition, do hereby certify under penalty of perjury
that the foregoing is true and correct.

Executed on May 3rd, 1983.

Howard F. Hatch
Petitioner

"F"
EXHIBIT

Ex. P-8
5-6-83
Howard Hatch
P.

Recorded at Request of _____
at _____ M. Fee Paid \$ _____
by _____ Dep. Book _____ Page _____ Ref. _____
Mail tax notice to _____ 12937 Address _____

RECORDED AT REQUEST OF
HOWARD HATCH
MAY - 3 PM 4:26

12937

WARRANTY DEED

(Special)

HOWARD F. HATCH and MARJORIE S. HATCH, his wife,
grantors
of 1190 Old Willow Lane, Provo, Utah 84604 hereby

CONVEY AND WARRANT against all claiming by, through or under them to be held
in trust to secure the repayment of \$30,000 as per the terms of a
promissory note of even date,*
to UNIVERSITY AVENUE DEVELOPMENT ASSOCIATES, A Utah Limited
Partnership

grantee

of 460 North University Avenue, Provo, UT 84601 for the sum of

TEN (and other good and valuable consideration) * * * DOLLARS,

the following described tract of land in Utah County,

State of Utah: Beginning at a point on the East side of Carterville
Road, which point is North 829.45 feet and East 1398.23 feet from
the West Quarter Corner of Section 25, Township 6 South, Range 2
East, Salt Lake Base and Meridian: thence North 3°05' East 62.66
feet; thence South 84°10'-1/2' East 323.18 feet along a fence; thence
North 41°57' East 61.04 feet along a fence; thence North 37°55' East
16.14 feet along a fence; thence North 52°18' East 37.64 feet along
a fence; thence North 73°13' East 26.42 feet along a fence; thence
North 83°51' East 59.36 feet along a fence; thence South 7°29'
East 194.82 feet; thence South 13°01' West 83.42 feet; thence South
53° West 129.41 feet; thence South 16°38' East 9.43 feet; Thence
East 157.74 feet; thence North 39.08 feet; thence West 160 feet;
thence South 45.20 feet; thence North 36°26' West 92.31 feet;
thence North 85°12' West 48.11 feet; thence South 64°03' West 54.05
feet; thence South 74°46'-1/2' West 130.92 feet; thence North 3°05'
East 158.62 feet to the point of beginning.

*In the event of default, grantee is hereby authorized to record
this deed within six months in lieu of foreclosure.

WITNESS, the hand of said grantors, this 28th day of
August, A. D. 1981

Signed in the Presence of

Howard F. Hatch
Marjorie S. Hatch

STATE OF UTAH,

County of Utah

On the 3rd day of May, A. D. 1983
personally appeared before me HOWARD F. HATCH and MARJORIE S. HATCH,
husband and wife,
the signers of the within instrument, who duly acknowledged to me that they executed the
same.

BOOK 2047 PAGE 478

"G"

JOHNNY M IVERSON, TRUSTEE
DUANE J SYKES, ALTERNATE TRUSTEE
PO BOX 436
PROVO UT 84601

SAVINGS ACCOUNT

ACCOUNT NUMBER
032-303529-5
STATEMENT DATE
06/27/90
PAGE NO.
01

STATEMENT SUMMARY SOCIAL SECURITY NUMBER 529-36-1206

PREVIOUS STATEMENT BALANCE ON 03/28/90 OF..... 6,072.41
1 DEPOSITS & OTHER CREDITS WERE ADDED..... 10,900.00
0 WITHDRAWALS & OTHER DEBITS WERE DEDUCTED .00
INTEREST PAID THIS PERIOD..... 167.93
RESULTING IN A CURRENT BALANCE ON 06/27/90 OF.. 17,140.34

INTEREST PAID YEAR TO DATE..... 249.73
NUMBER OF DAYS IN THIS INTEREST PERIOD..... 91

TRANSACTIONS THIS PERIOD

DATE	AMOUNT	TRANSACTION DESCRIPTION
05/11/90	10,900.00	DEPOSIT
06/30/90	167.93	INTEREST PAID BY COMPOUNDING

First Security Bank

First Security Bank of Utah, N.A.
Salt Lake City, Utah

Official Check

849413414

Office No 033-av Date 5-11-90

Payee, Zions Bank (acct. # 12 303529-5 Johnny M Iverson, Trustee \$10,900.00

Ten thousand nine hundred and 00/100ths

Purchaser

Receipt

For Remitter: Duane J. Sykes & Johnny M. Iverson Not Negotiable 12/11/88

ZIONS FIRST NATIONAL BANK

MEMO	WITHDRAWALS	DEPOSITS	BALANCE
03529-5 -90DEP32		10900.00	10972.41 03

OVERPAYMENT & CALCULATION

\$16,972.41 (= savings acct. bal. on 5-11-90)
- 8,298.44 (= escrow balance due on 10-20-80)
\$ 8,673.97 (= savings acct. overpayment on 5-11-90)

CEIVED AFTER REGULAR BUSINESS HOURS ARE RECEIVED FOR SAFEKEEPING TO HAVE BEEN RECEIVED AT THE OPENING OF THE NEXT BUSINESS DAY

This overpayment of at least \$500.00 (minimum) to \$8,673.97 is intended to preclude any accounting disputes or any claims that buyers Sykes/Iverson were unable to perform their past unconditional tenders or were ever incapable of paying the

TRANSACTIONS RECEIVED HEREIN ARE TO BE PAID TO THE ORDER OF

SAVINGS

ADDENDUM "H"

Dwane J. Sykes, Plaintiff
1511 So. Carterville Rd.
Orem, UT 84058
ph. 801-225-0686 [AFFID.TITLE]

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH

DENNIS L. SYKES, DWANE J. SYKES,
PATRICIA SYKES and JOHNNY M. IVERSON,

Plaintiffs,
vs.

AFFIDAVIT OF VALLEY TITLE
OFFICER MARK HALL

HOWARD F. HATCH, MARJORIE S. HATCH,
HOWARD HATCH & ASSOCIATES, et. al.,

Defendants and
Third-Party-Plaintiffs,
vs.

ANTHONY RAGOZZINE, RUTH W. RAGOZZINE,
PROVO LAND TITLE CO., LEON PETER PIEROTTI
AND KAREN E. PIEROTTI,

Third-Party-Defendants.

Civil No. 57,127

Judge David L. Mower

Date: Feb. 4, 1990

HOWARD F. HATCH, MARJORIE S.
HATCH, et. al.

Plaintiffs,
vs.

ZIONS FIRST NATIONAL BANK,
DWANE J. SYKES, et. al.,

Defendants

DWANE J. SYKES,

Third-party Plaintiff
vs.

LEON PETER PIEROTTI, KAREN E. PIEROTTI,
et. al.,

Third-party Defendants.

Civil No. 63,695

Judge David L. Mower

STATE OF UTAH)
) ss
COUNTY OF UTAH)

AMENDAM "I"

Being first sworn on oath, Mark Hall deposes and says:

1. I am a licensed title examiner in the State of Utah.

2. I have seen and reviewed the Oct. 16, 1980, Sept. 22, 1980, Feb. 11, 1981 and April 9, 1981 letters from Orem City regarding several outstanding violations of Orem City and Utah State subdivision and health codes (Exhibits 72, F, 83, 84) and Orem City's threats of suit thereon regarding the 70 x 100 ft. "Pierotti/Hatch house property" and the "Ragozzine/Sykes house property", both at about 1500 So. Carterville Road, Orem.


3. Without rendering any opinion on the validity of those alleged violations, those notices and their related lawsuits constitute a lien or encumbrance upon both properties to anyone aware of them, and any Lis Pendens recorded of record give notice to the general public.

4. Our firm would list all such Orem City and Utah State code violations as excluded encumbrances on any title reports we would issue on either property, including that policy of title insurance required to be issued under contract #119 of the underlying Pierotti-Iverson contract (Exhibit 27) insuring the Warranty Deed which is to issue therefrom as being free and clear.

5. We would not insure any of the several attached proposed Warranty Deeds regarding the identical Hatch-Pierotti property (Exhibits 29, 29-B, 29-C, 29-D, 30) as being free and clear of all encumbrances.

6. Likewise, we would not insure the property described in the 1975 Warranty Deed from Ragozzine to Sykes (Exhibit F-2) as being free and clear of all encumbrances.

Dated this 4th day of February, 1991.



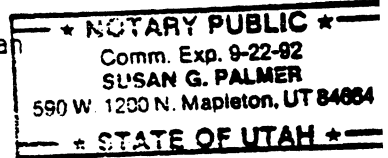
Mark Hall, Title Examiner
Valley Title Co.
325 East 1300 So.

Orem, Utah

SUBSCRIBED AND SWORN TO personally before me this 4th day of February, 1991.

My commission expires: 9/22/92
Residing at: Springville, Utah

Susan G. Palmer
Notary Public, State of Utah



CERTIFICATE OF MAILING

I certify that I personally hand delivered at the hearing and correct copy of the foregoing, on the 4th day of Feb. 1991, to the following:

Howard F. Hatch
Marjorie S. Hatch
Howard Hatch & Associates
University Ave. Development Assoc.
Spenser F. Hatch, Esq.
460 North University Ave., #201
Provo, UT 84601

Spenser F. Hatch, Esq.
19221 Sherborne Lane
Huntington Beach, CA 92646

Kent M. Barry
170 West 100 North
Provo, Utah 84601

Sam Primavera
37 East 400 North
Provo, Utah 84601

Judge David L. Mower
Sixth Circuit Court
250 North Main St.
Richfield, Utah 84701

Frederick Jackman, Esq.
1327 S. 800 E.
Orem, Utah 84058

Anthony Ragozzine
Ruth Ragozzine
General Delivery
Hurricane, Utah

Douglas M. Whitehead; R.L.Hill
OLSEN, HINTZE, NIELSON, & HILL
Jamestown Square, Suite 200
3319 No. University Ave.
Provo, UT 84604

Dwane J. Sykes,
1511 So. Carterville Rd.
Orem, UT 84058
ph. 801-225-0686 [affid.ore]

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH

HOWARD F. HATCH, et. al.
Plaintiffs,

vs.

AFFIDAVIT

ZIONS FIRST NATIONAL BANK, et. al.
Defendants

Civil No. 63,695

SYKES, et. al.,
Plaintiffs,

vs.

HOWARD F. HATCH, et. al.
Defendants

Civil No. 57,127

DWANE J. SYKES,
Plaintiff,

vs.

ANTHONY RAGOZZINE and RUTH RAGOZZINE,
Defendants

Civil No. 57,125
Judge David L. Mower
Date: April 25, 1991

STATE OF UTAH)
) ss
COUNTY OF UTAH)

1. I, Jim Wilbur, am Senior Planner for the Orem City Development Services.

2. The various subdivision and health code violations have not yet been cured, which were set forth in the attached letters from Orem City Senior Planner Don W. Baird, dated October 16, 1980 to Howard Hatch, Sept. 22, 1980 to Anthony and Ruth Ragozzine, and February 11, 1981 to Dwane J. and Patricia Sykes.

3. Orem City continues to rely upon--and insist upon--cure via the ongoing litigations set forth in Dwane J. Sykes' letter to us of April 9, 1981. Via the above letters Orem City considers itself a participant in

... "1"

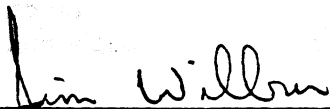
the above cited litigations, as to the code violations.

4. The addition of parcels A-2 and and A-3 pursuant to the map and Aug. 1, 1983 affidavit of W. S. Gardiner Registered Surveyor #2681, will satisfactorily cure the violations on the Ragozzine/Sykes house, parcel A-1, as required by Mr. Baird's letter of Sept. 22, 1980.

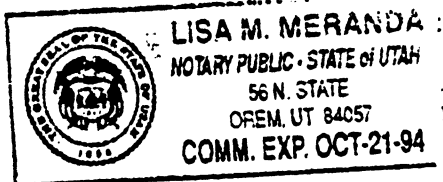
5. The addition of parcel B-2 on that map, being 10 foot frontage by 100 feet deep, will satisfactorily cure the violations on the Hatch/Pierotti/Sykes house, parcel B-1, as required by Mr. Baird's letter of Oct. 16, 1980.

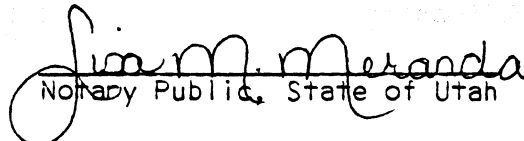
6. So long as said violations continue the two said house lots are not legally subdivided parcels, and Orem City will restrict attempts to sell, transfer, or convey them until all violations are properly cured.

date: April 25, 1991


Jim Wilbur, Senior Planner
Orem City

Subscribed and sworn to by Jim Wilbur before me this 25th day of April, 1991.




Notary Public, State of Utah

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing, U.S. Mail, postage prepaid, this 25 day of April, 1991, to the following:

Howard F. Hatch
Marjorie S. Hatch
Howard Hatch & Associates
Spencer F. Hatch, Esq.
843 South 1140 East
Pleasant Grove, UT 84062

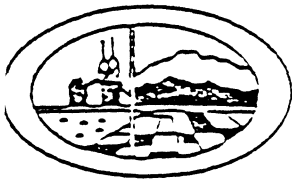
Spencer F. Hatch, Esq.
19221 Sherborne Lane
Huntington Beach, CA 92646

Judge David L. Mower

Frederick Jackman, Esq.
1327 S. 800 E.
Orem, Utah 84058

Ruth Ragozzine
662 West 150 North
Hurricane, Utah 84737

Sam Primavera
37 East 400 No.
Provo, UT 84601



CITY OF OREM

56 NORTH STATE OREM, UTAH 84057 (801) 224-7000

October 16, 1980

Mr. Howard Hatch
Howard Hatch and Assoc.
2195 West 620 North
Provo, UT 84601

Dear Mr. Hatch:

It has come to our attention that a lot which does not conform to the zoning requirements of the City of Orem was divided by you from a parcel of property you own at approximately 1500 South and Carterville Road in Orem. The lot to which I refer is one which was sold by you to Leon and Karen Pierotti. This lot is 70 by 100 feet.

At the time this division was made the minimum lot size for this zone was 8,000 square feet with a minimum of 80 feet frontage. Other problems with this lot are that it does not provide proper setbacks from the structure to the property lines and the lot was divided without first submitting the proper subdivision plats for approval by the City of Orem.

Since you were the seller of this property and are currently the owner of record of the property from which the Pierotti lot was separated you are the one responsible for making the necessary corrections to bring this lot into compliance with Orem City standards. As you have previously developed property in Orem, I am certain you are aware of the process for properly subdividing property. And as a real estate broker you would certainly be aware of the problems of undersized lots and haphazard developments.

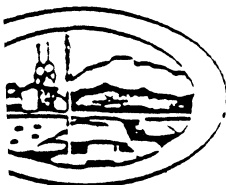
The City of Orem is prepared to initiate legal action if the problems which have been identified are not corrected within sixty (60) days. Your cooperation in this matter will be appreciated. If you have any questions, please feel free to contact me at 224-7058.

Sincerely,

/s/

Don W. Baird

EXHIBIT 72



CITY OF OREM

56 NORTH STATE OREM, UTAH 84057 (801) 224-7000

September 22, 1980

Mr. & Mrs. Anthony and Ruth Ragossine
662 West 150 North
Hurricane, UT 84737

Dear Mr. and Mrs. Ragossine:

At the time you were owners of a parcel of property (approximately seven acres) located approximately at 1511 South Carterville Road in Orem, an illegal lot was created towards the center of this property. The lot was apparently created by means of a sales contract from you to Equitable Realty, Howard Hatch, President, and later conveyed and recorded by a Warranty Deed dated March 20, 1975, from you to Howard and Margorie Hatch.

The boundary lines of the lot created in the center of this parcel were apparently set without regard to the existing house or the accessory buildings and facilities surrounding the house. Upon inspection of the property I have found several violations of both state and city codes. These violations are: 1. Utah State Division of Health, Code of Waste Disposal regulations, part 4, page 4, table 4-1, which requires a septic tank to be located upon the same lot as the building served and to have a minimum of a five (5) foot setback from the property line. 2. Section 28-286 of the Orem City Code which requires at least one side of every lot to abut upon a public dedicated street. 3. Section 28-49(B) of the Orem City Code which stipulates the minimum required setbacks for accessory buildings.

Section 28-49(A) which requires a minimum side yard total of 20 feet and minimum side yard of 8 feet for one side and also requires a rear yard setback, from the building to the property line, of 30 feet.

To correct the problems, the boundaries of this lot must be adjusted to provide a minimum of 80 feet of frontage on Carterville Road, include the farmhouse and its appurtenance and conduits, the septic tank and drainfields, proper side yard setbacks and a minimum of 30 feet for a rear yard. Hopefully any yard adjustments would include the unique landscaping which has been associated with the house for several years.

Because you were the owners of the property at the time the lot with the illegal setbacks and frontage was created, you are the ones who are ultimately responsible for correcting the problem. You should also be aware that the current owners of the property have cause for civil action against you if the proper corrections are not made.

11-11
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11-11

Mr. & Mrs. Anthony : Ruth Ragoccine
September 22, 1980
Page 2

Since the original notice was sent to the current owner, Mr. Dwane Sykes, a great deal of time has gone by without a resolution which Mr. Sykes expected from a separate purchase agreement with Mr. Hatch. Therefore, we are notifying you directly.

If there are any mitigating circumstances associated with the manner in which this lot was separated from the balance of the property, we would like to be aware of them. These circumstances could include reliance upon professional persons in making the division, or whether or not you were aware of the actual location of the new lot lines.

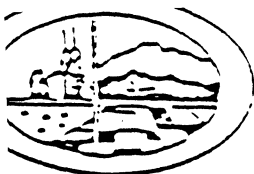
Your cooperation in this matter will be appreciated. If you have any questions concerning this situation, please feel free to call at (801) 224-7058 or write.

Sincerely,

Don W. Baird
Senior Planner

DWB:cj

cc: Dwane Sykes



CITY OF OREM

56 NORTH STATE OREM, UTAH 84057 (801) 224-7000

February 11, 1981

Mr. and Mrs. Dwane J. and Patricia Sykes
1511 So. Carterville Rd.
Orem, UT 84057

Dear Mr. and Mrs. Sykes:

Since the time the original notices were sent to you a great deal of time has gone by without any resolution to correct the two illegal lots at approximately 1511 and 1500 South Carterville Road in Orem. We have also written to the respective owners of record at the time those nonconforming lots were created (copies enclosed), who are ultimately responsible for correcting the problems, but without response or resolution.

Until those two lots are brought into full compliance with both Utah State and Orem City Codes, if you or any other present owner or successor in interest, sell or attempt to sell, assign, or convey either of these properties it will constitute additional violations, and you are prohibited from doing so until the lots are brought into compliance.

As to the interior 136 by 160 foot lot at approximately 1511 So. Carterville Road, Orem, Utah, the code violations set forth in my enclosed letter of September 22, 1980, to Mr. and Mrs. Ragozzine, 662 West 150 North, Hurricane, UT 84737, are incorporated herein by reference. As stated therein, to correct the problems, the boundaries of this interior lot must be adjusted to provide a minimum of 80 feet of frontage on Carterville Road, to include the pumphouse and its appurtenance and conduits, the septic tank and drainfields, proper side yard setbacks and a minimum of 30 feet for a rear yard, and subdivision approval is obtained from Orem City.

As to the 70 by 100 foot lot at approximately 1500 So. Carterville Road, the code violations set forth in my enclosed letter of October 16, 1980, to Mr. Howard Hatch, Howard Hatch and Assoc., 2195 West 620 North, Provo, UT 84601, are incorporated herein by reference. As stated therein, to correct the problems, the boundaries of that lot must be adjusted to include a minimum of 8,000 square feet with a minimum of 80 feet frontage on Carterville Road, to provide proper setbacks from the structure to the property lines, and subdivision approval is obtained from Orem City. The roadway you refer to as Hope Lane, on the north, is not a public street nor is it dedicated; it does not meet the requirements for frontage on a public dedicated street.

As further indicated in those letters, as current owners and/or equity owners of the properties, Mr. and Mrs. Sykes, you have cause for civil action against those owners of record at the time of creation of the illegal lots, Ragozzines and Hatch. You may compel them to make the required corrections, or do so yourself. The City of Orem is prepared to initiate legal action against former and current owners if adequate steps are not undertaken within sixty (60) days to bring both of these lots into compliance.

23

Mr. and Mrs. Dwane J. and Patricia Sykes
February 18, 1981
Page 2

Your cooperation in this matter will be appreciated. If you have any questions, please feel free to contact me at 22--7058.

Sincerely,

Don W. Baird
Senior Planner

DWB:cj

Enclosures: two

1511 So. Carterville Rd.
Orem, UT 84057
April 9, 1981

Don W. Baird, Senior Planner
City of Orem
56 North State
Orem, Utah 84057

Dear Mr. Baird:

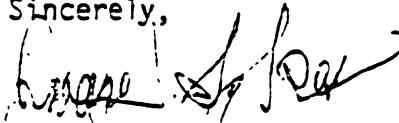
This replies to your letter of Feb. 11, 1981, concerning two nonconforming lots at about 1511 South Carterville Road, Orem.

I have made repeated demands upon both Mr. and Mrs. Howard Hatch and upon Mr. and Mrs. Anthony Ragozzine for them to clear up these illegal lot problems. But all to no avail. They have simply ignored these requests and demands.

Enclosed you will find copies of two civil actions recently filed against them in the Fourth Judicial District Court, Utah County: Sykes v. Ragozzines, CV No. 57,125, and Sykes v. Hatch, et. al., CV No. 57,127. Each of these complaints demands correction of the illegal lots created by the respective defendants.

I trust this will forestall any legal action by Orem City in this regard. If you have questions please call me.

Sincerely,



Dwane J. Sykes

Encl: 2

84
VIRIT

Howard F. Hatch
P.O. Box 190
Provo, Utah 84604
(801) 377-3400/3440

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

* * * * *

DENNIS L. SYKES, DWANE J. SYKES,
PATRICIA SYKES AND JOHNNY IVERSON,

Plaintiffs,

-vs-

HOWARD F. HATCH, MARJORIE S. HATCH,
HOWARD HATCH & ASSOCIATES, (formerly
EQUITABLE REALTY, INC.)

Defendants.

AMENDED ANSWER
(THIRD), AMENDED
COUNTERCLAIM AND
THIRD-PARTY COMPLAINT
(SECOND)

*Answered
6-8-83*

HOWARD F. HATCH, MARJORIE S. HATCH,
HOWARD HATCH & ASSOCIATES, (formerly
EQUITABLE REALTY, INC.)

Third-Party Plaintiffs, Civil No. 57,127

-vs-

ANTHONY RAGOZZINE AND
RUTH W. RAGOZZINE,
PROVO LAND TITLE COMPANY,
LEON PETER PIEROTTI AND
KAREN E. PIEROTTI,

Third-Party Defendants.

* * * * *

The Defendants, HOWARD F. HATCH and MARJORIE S. HATCH,
hereby amend their Answer, Counterclaim, and Third-Party
Complaint as follows.

AMENDED ANSWER

1. Defendants lack sufficient knowledge to admit or deny that DENNIS L. SYKES is a resident of Anchorage, Alaska, as alleged in Paragraph 1 of Plaintiff's Complaint.

2. Defendants admit Paragraph 2 through 5 of Plaintiff's Complaint.

DEFENSES TO THE FIRST CAUSE OF ACTION

Breach of Contract

3. Defendants admit that on or about the 6th day of June, 1974 they did enter into an Option for Sale of Real Estate, the terms of which were later incorporated in the Uniform Real Estate Contract dated November 13, 1974, which in turn lead to the execution of a Warranty Deed dated May 26, 1975 by and between HOWARD F. HATCH and MARJORIE S. HATCH, as grantors, and DENNIS LYNN SYKES, a single man, as grantee, a copy of which is attached hereto as Exhibits 1 through 3 respectively. Defendants, however, deny that they or any of their agents ever granted an option to purchase additional property to the Plaintiff as claimed in Paragraph 6 of Plaintiff's Complaint.

4. Defendants lack sufficient knowledge upon which to admit or deny Paragraph 7 of Plaintiffs' Complaint.

5. Defendants deny that the handwritten Options for Sale of Real Estate identified as Exhibit "A" attached to Plaintiff's Complaint has any merit or that it formed any

part of the agreement between the parties or that it substantiates in any way Plaintiffs' claim to a right to purchase anything other than what was described in Plaintiffs' Exhibit "B" but rather that it serves to defeat the Plaintiffs' contention that Defendants gave an Option to Purchase any real property other than that which is described in Exhibit "B." Defendants further assert that the so-called Notice of Interest in Real Property identified as Exhibit "C" in Plaintiffs' Complaint was never executed in any way by the Defendants but rather represents a forgery and is a fraudulent document. Further that there never was any other written memoranda which Plaintiffs allege supported their purported Option to Purchase of the north portion of the subject property as asserted in Paragraph 8 of Plaintiffs' Complaint.

6. In response to Plaintiffs' Paragraph 9 of the Complaint, Defendants admit the validity of Exhibits "B" and "D" but deny any other of Plaintiffs' claims against the Defendants' property.

7. Defendants lack sufficient knowledge to admit or deny the allegations made in Paragraphs 10 and 11 of Plaintiff's Complaint which referred to Exhibits "E" and "F" attached thereto.

8. Defendants deny Plaintiffs' allegations made in Paragraphs 12 through 16.

9. With respect to Plaintiffs' Paragraph 17, the Defendants in fact had no agreement at all with their predecessors in title, ANTHONY and RUTH RAGOZZINE, regarding partial releases of the property, that this was explained to the Plaintiffs before they ever purchased the south portion of the property and they thus took their chances of obtaining any such partial release. Defendants agreed only that they would cooperate with Plaintiff in his attempt to obtain such a partial release from the RAGOZZINES.

10. With respect to Paragraphs 18 and 19, the Defendants either deny or lack sufficient knowledge to admit the allegations made in these paragraphs and would put the Plaintiff's on their burden of proof to establish the same if material.

11. Defendants admit having refused to acknowledge any right on the part of Plaintiffs to purchase the northern portion of the property as alleged in Paragraph 20 for the reason that no such agreement ever existed.

12. With respect to the allegations in Paragraphs 21 through 26, the Defendants either deny or lack sufficient knowledge to admit the allegations made therein, and therefore put the Plaintiffs on their burden of proof to establish any cause of action they might have.

13. As affirmative defenses to the Plaintiffs' First Cause of Action (Breach of Land Contract), the Defendants plead the following:

14. Lack of consideration, reliance on forged documents, statute of frauds, or in the alternative, the statute of limitations (§ 78-12-25 of the U.J.C), satisfaction and accord, contributory negligence, estoppel, waiver, and no cause of action.

DEFENSES TO THE SECOND CAUSE OF ACTION

Interference/Breach of Fiduciary

15. With respect to Plaintiffs' claims as alleged under Paragraphs 27 through 34, Defendants deny that they have interfered in any way with contracts involving the Plaintiff parties or that they have breached in any way any fiduciary duty which might have been owed to any of the parties or that they have wronged in any way the Plaintiffs by any act as alleged and that the Plaintiffs are put upon their burden of proof to establish any such claims. Defendants rely on the following affirmative defenses: lack of consideration, statute of frauds, state of limitations (§§ 78-12-25 and 78-23-26), laches, and no cause of action.

DEFENSES TO THE THIRD CAUSE OF ACTION

Violation of Real Estate Broker's Law

16. Plaintiffs' Complaint in Paragraphs 35 through 37 are hereby denied and Defendants elect as affirmative defenses to said complaints the following: laches, no standing, statute of limitations (§ 78-12-26) and no cause of

action for which relief can be granted.

DEFENSES TO THE FOURTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

17. The Defendants deny having intentionally inflicted any emotional distress on the Plaintiff parties and would put them on their burden of proof as to any such claims as alleged in Paragraphs 38 through 44 and would designate as affirmative defenses thereto contributory negligence, statute of limitations (§ 78-12-26) and no cause of action.

DEFENSES TO THE FIFTH CAUSE OF ACTION

Wrongful Subdivision

18. The Defendants deny any wrong doing as described in Paragraph 45 through 48 and put the Plaintiffs on their burden of proof to establish the same, seeking as their affirmative defenses the following: no standing, satisfaction and accord, laches, AND statute of limitations (§§ 78-12-25 and 78-12-26).

DEFENSES TO THE SIXTH CAUSE OF ACTION

Adverse Possession in the Alternative

19. Defendants deny Plaintiffs' claims under Paragraphs 49 through 59 allegedly giving Plaintiffs any rights over the Defendants' property by adverse possession and put the Plaintiffs upon their burden of proof to establish any

material claims and affirmatively allege as defenses the statute of limitations (§ 78-12-6 of the U.J.C.), no standing, the statute of frauds, lack of consideration, and no cause of action.

DEFENSE TO THE SEVENTH CAUSE OF ACTION

Wrongful Subdivision, Pierotti Property

20. Defendants deny Plaintiffs' allegations in Paragraphs 60 through 63 and allege affirmative defenses under the statute of limitations (§ 78-12-26), lack of consideration, laches, no standing, and no cause of action.

DEFENSE TO THE EIGHTH CAUSE OF ACTION

Trespass

21. Defendants deny Paragraphs 64 through 66 under Plaintiffs' Eighth Cause of Action and affirmatively allege defenses under the statute of limitation (§ 78-12-26), laches, and no cause of action.

DEFENSE TO THE NINTH CAUSE OF ACTION

Reformation of Deed

Defendants deny Plaintiffs' Complaint under the Ninth Cause of Action, Paragraphs 67 through 71 and affirmatively allege defenses under contributory negligence, laches, statute of limitations (§ 78-12-26) and no cause of action. For more particular responses to the specific allegations

contained within the Plaintiffs' Complaint, the Defendants would refer to their original Amended Answer dated December 22, 1981 and which they incorporate herein by this reference.

WHEREFORE, the Defendants pray that the Plaintiffs take away nothing, the Defendants' title be quieted with respect to the Plaintiffs' false claims against the same, and that the Defendants be granted their attorney's fees, expenses, and all court costs incidental to the subject action.

AMENDED COUNTERCLAIM AND
THIRD-PARTY COMPLAINT

COME NOW, HOWARD F. HATCH and MARJORIE S. HATCH, Defendants and Third-Party Plaintiffs in the above entitled action and make the following counterclaim and Third-Party Complaint against the Plaintiffs and Third-Party Defendants, ANTHONY RAGOZZINE, RUTH W. RAGOZZINE, his wife; PROVO LAND TITLE COMPANY, and LEON PETER PIEROTTI and KAREN E. PIEROTTI, his wife, as follows:

1. HOWARD F. HATCH and MARJORIE S. HATCH hereinafter referred to as HATCH are and have been at all times during the pendency of these proceedings residents of Utah County.

2. Third-Party Defendants, ANTHONY RAGOZZINE and RUTH W. RAGOZZINE, are hereinafter referred to as RAGOZZINE, were at all times residents of Utah County during which time the acts herein complained of were performed but are presently residents of Washington County, Utah.

3. PROVO LAND TITLE COMPANY, hereinafter referred to as PROVO LAND, is a Utah Corporation organized under the laws of the State of Utah with its principal offices at 255 East 100 South, Provo, Utah.

4. Third-Party Defendants, LEON PETER PIEROTTI and KAREN E. PIEROTTI, hereinafter referred to as PIEROTTI, were residents of Utah County at all times during which the acts herein complained of were performed and are still today.

5. The contracts entered into which formed the basis of this Counterclaim and Third-Party Complaint were entered into in Utah County and the property subject to this lawsuit is located in Utah County.

FIRST CAUSE OF ACTION

Breach of Contract/Fiduciary, Unlawful Conversion and Fraud

6. On or about the 1st day of November, 1971, RAGOZZINE entered into a Uniform Real Estate Contract With Equitable Realty, Inc. for the sale of approximately 6.5 acres of real property located at about 1535 South Riverside Drive (Carterville Road) Orem, Utah, a copy of which Contract is attached as Exhibit 5.

7. On or about the 1st day of February, 1973, an assignment of contract was entered into between Equitable Realty, as assignor, and HOWARD F. HATCH and MARJORIE S. HATCH, as assignees, assigning all right, title and interest to the property described in said Uniform Real Estate

II Contract of November 1, 1971 to HOWARD F. HATCH and MARJORIE S. HATCH as individuals. On or about February 12, 1973, a Quit Claim Deed was filed of public record reflecting said transfer of interest.

8. On or about the 23rd of March, 1975, a Deed was executed by RAGOZZINE transferring all right, title, and interest to the property previously described under the contract of November 1, 1971 to HOWARD F. HATCH and MARJORIE S. HATCH, which property included "all water rights owned in connection with the former H. Fern Wentz property (being 1.2 shares of Wes Smith Ditch plus any decreed rights) to Grantees which Deed is attached as Exhibit 6.

9. At no time either at or about the time of said transfer or at any time since has Third-Party Defendants, RAGOZZINE, ever delivered to HATCH the water shares promised and granted under said Warranty Deed of 23 March, 1975. At or about this time, DWANE J. SYKES, made demands upon PROVO LAND for delivery to him of water stock which had been endorsed in blank by RAGOZZINE. PROVO LAND, contrary to its fiduciary obligations and in violation of what was believed to have been instructions from RAGOZZINE, delivered said water stock to SYKES upon the false representation that said water stock belonged to him.

10. Having been informed that a certificate to convey said water shares was erroneously delivered into the hands of DWANE J. SYKES, HATCH made demand upon SYKES to rectify this

20 action. In spite of such demands, SYKES, failed and refused to do so, which conduct is believed by HATCH to be willful and malicious. At no time since said demand was made has Counter-Defendant, SYKES, rectified what he characterized as a mistake by reconveying the water rights rightfully belonging to HATCH

11. On or about January 25, 1977 letters were sent by Ronald J. Schiess, attorney at law, on behalf of HATCH making demand upon SYKES, RAGOZZINE, and PROVO LAND to rectify this and to restore the subject water rights to HATCH.

SECOND CAUSE OF ACTION

Trespass

12. Defendants incorporate by this reference their pleadings under Paragraphs 1 through 11 herein. At all such times and since the Plaintiffs and Cross-Defendants have taken liberties with HATCHS' property which did not rightfully belong to them such as trespassing, keeping and maintaining horses in the wet pasture belonging to Defendants, picking cherries and black berries from the property, posting signs on the property without the permission of the owner, dredging material from the pond and depositing it upon HATCHS' property and many other such serious violations of the property rights belonging to HATCH. Various demands have been made on the Plaintiffs to cease and desist from said trespasses and encroachments but without

success.

THIRD CAUSE OF ACTION

Slander of Title, Interference in Business Relationship and Fraudulent Claims

13. Defendants incorporate by this reference their pleading under Paragraphs 1 through 12 herein. At various times during the intervening period Plaintiffs and Counter-Defendants, SYKES, have made false claims against the property belonging to HATCH based on a forged document, have posted "No-Trespassing" signs on the subject property claiming it in the name of SYKES, removing real estate "For Sale" signs having been posted on the property by HATCH, asserting claims both verbally and in writing to Zion's First National Bank and others, threatening potential buyers with lawsuits, and in a variety of other ways slandering the title of HATCH and interferring in business relationships he had with Zion's First National Bank and others, including Third-Party Defendants, PIEROTTI. This conduct counterclaimants believe to be willful and malicious.

14. On or about October 3, 1980, SYKES caused to be placed of record in the Office of the Utah County Recorder, an instrument entitled Notice of Interest of Real Property which purports to lay claim to property belonging to HATCH herein referred to as the north portion of the subject property, which action constitutes a slander of title on Defendants property.

15. On or about the 7th day of February, 1982, the Plaintiff, DWANE J. SYKES, caused to be recorded what was characterized as a "Notice of Prior and Superior Interest in Real Property, etc." as entry no. 22128 Book 2000, Page 301 of the Utah County Records. The notice falsely asserted claims over HATCHS' property which also constitutes a grave and serious slander of title and which had the immediate effect of interferring in a business relationship with Zions' First National Bank and one Virginia Flynn with whom money had been arranged to purchase the beneficial interest belonging to Zions' First National Bank of a First Deed of Trust over the north portion of the subject property.

*debits
one bank
with
suppy card
in it*

FOURTH CAUSE OF ACTION

Attempted Extortion and Slander

16. Defendants incorporate by this reference their pleadings under Paragraphs 1 through 15 herein. On or about February 11, 1980, the Plaintiff, DWANE J. SYKES, appeared at the offices of Defendant, HATCH, handing him a long list of threats intending to coerce HATCH into a forced sale of the north portion of the property based on what he, SYKES, alleged to be a verbal option granting him the right to purchase the north portion of the property but which claims HATCH vigorously denied and to which demands HATCH categorically refused to comply with. Thereafter, SYKES attempted on various occasions to bring pressure to bear on

HATCH by slandering his good name or threatening to do so.

FIFTH CAUSE OF ACTION

Breach of Contract and Interference in Business Relationship

17. Defendants incorporate herein by reference their pleading paragraphs 1 through 16 herein. That on or about the 30th of July, 1973, HATCHS entered in a Uniform Real Estate Contract with Third-Party Defendants, PIEROTTI, for the sale of a house located at 1525 South Carterville Road, which transactions is more fully described in the Uniform Real Estate Contract attached hereto as Exhibit 4 and which contains the following language under Paragraph 20: "Seller shall have the first right of refusal on any and all subsequent sales of said property."

18. On or about September 14, 1979 PIEROTTI as sellers and JOHNNY IVERSON, one of the herein named counter defendants, as buyer, entered into an agreement whereby the property purchased by PIEROTTI was assigned to Plaintiff, JOHNNY IVERSON. Upon their best knowledge and belief, Defendants allege that said assignment was in fact to DWANE J. SYKES which would constitute a breach of the contract entered into between HATCH and PIEROTTI above referenced.

19. That said contract dated 30 July, 1973 called for payment in the amount of \$113.25 per month including interest at 8.5% per annum from the buyers PIEROTTI to the

sellers HATCH.

20. That since March 19, 1980 no such payments have been received by the Defendants and that as of that date \$8,690.59 was still due and payable.

21. That as of May 1, 1983, 38 monthly installments were past due and owing for a total of \$4,294.19, constituting a very grave default in the terms of the contract. The total demand figure as of May 1, 1983 being \$11,029.80.

WHEREFORE, Defendants HATCH, pray for judgment on their Counterclaim and Third-Party Complaint as follows:

1. An Order by the Court decreeing that .6 shares of Wes Smith Ditch Water Company presently in SYKES' name be recorded in favor of Counterclaimants, HOWARD F. HATCH and MARJORIE S. HATCH.

2. The counterclaimants be awarded \$15,000 in punitive damages against the Plaintiffs and Counter-Defendants for the wrongful conversion of water shares.

3. For \$5,000.00 actual damages to Counterclaimants' property due to lack of irrigation water during the irrigating season of 1976-1982

4. For \$1,800.00 actual damage for the use of the wet pasture that Plaintiffs not only utilized for their own use but rented out and collected rents thereon.

5. The Counterclaimants, HATCH, be awarded punitive damages in the amount of \$5,000.00 against Plaintiffs for

their continued trespass on the property despite repeated warnings given them by Counterclaimants.

6. For \$500.00 actual damages to Counterclaimants against the Plaintiffs SYKES for misappropriation or conversion of berry crops consisting of sour cherries and black berries belonging to Counterclaimants.

7. For \$1,000.00 actual damages done to wet pasture when Plaintiffs deposited dirt, rock, and debris thereon when which was dredged from the pond, a portion of which belonged to Counterclaimants and for which no permission was obtained.

8. For \$500.00 actual loss to HATCH for pine logs and sections of concrete pipe which were converted by Plaintiff SYKES. *left on south 1/2 for sale & transfer*

9. That the Counterclaimants be awarded actual damages in the amount of ~~\$150,000.00~~ for repeated interference in business relationships for slander of title which resulted in the loss of the subject property at trustee sale by Defendants/Counterclaimants. *after this fraud & forgery*

10. For \$450,000.00 punitive damages related to the said interference of business relationships and slander of title which actions were willful and malicious.

11. For an Order by the Court declaring a breach in contract under the terms of the PIEROTTI July 30, 1973 contract and which is resently in default by virtue of violation of Paragraph 20 of said contract as well as failure to make and keep current monthly payments.

12. Or in the alternative, an order of Foreclosure against the parties IVERSON and PIEROTTI.

13 For injunctive relief as requisite, for interest at the highest legal rate on all actual and punitive damages, for costs of court herein, and expenses of the Defendant parties, attorney's fees as expended, and for such other relief as the Court may deem just and proper.

DATED this 9th day of May, 1983.


Howard F. Hatch


Marjorie S. Hatch

Dwane J. Sykes, Plaintiff
1511 So. Carterville Rd.
Orem, UT 84058
ph. 801-225-0686 [ludlow.aff]

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH

DENNIS L. SYKES, DWANE J. SYKES,
PATRICIA SYKES and JOHNNY M. IVERSON,

Plaintiffs,

AFFIDAVIT OF MELVIN J. LUDLOW

vs.

HOWARD F. HATCH, MARJORIE S. HATCH,
HOWARD HATCH & ASSOCIATES, et. al.,

Defendants and
Third-Party-Plaintiffs,

vs.

ANTHONY RAGOZZINE, RUTH W. RAGOZZINE,
PROVO LAND TITLE CO., LEON PETER PIEROTTI
AND KAREN E. PIEROTTI,

Third-Party-Defendants.

Civil No. 57,127

Judge David L. Mower

Date: Oct. 2, 1992

I, Melvin J. Ludlow, have been secretary and stock transfer agent for
THE WEST SMITH DITCH COMPANY, Provo, Utah, since 1971.

Though prices vary a lot and 1975 is a long time ago, my best
recollection is that the typical sale price in 1975 was less than about
\$500.00 per share, with a range probably of about \$ 300.00 to about
\$700.00.

Melvin J. Ludlow
Melvin J. Ludlow, Secretary

EXHIBIT

M

SUBSCRIBED AND SWORN TO personally before me this 2nd day of Oct., 1992.

My commission expires: 12-11-94



ATTACHMENT (2)

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

HOWARD F. HATCH, MARJORIE S.
HATCH AND UNIVERSITY AVENUE
DEVELOPMENT ASSOCIATES, A
Limited Partnership,

Plaintiffs,

-vs-

ZIONS FIRST NATIONAL BANK,
DWANE J. SYKES, VIRGINIA
FLYNN and WILLIAM
CHRISTIANSEN, d/b/a ARAPIAN
VALLEY LIVESTOCK CO.,

Defendants.

)
)
:
:
ORDER (long title,
below)

)
)
:
:
CIVIL NO. 63,695

)
)
:
:
Hon. David L. Mower

DWANE J. SYKES,

Plaintiff,

-vs-

ANTHONY RAGOZZINE and
RUTH RAGOZZINE,

Defendants.

)
)
:
:
CIVIL NO. 57,125

DENNIS J. SYKES, DWANE J. SYKES,
ET AL.,

Plaintiffs,

-vs-

HOWARD F. HATCH, ET AL.,

Defendants.

)
)
:
:
CIVIL NO. 57,127

EXHIBIT N

Hatch et al. v. Zions et al., Case number 63,695, 57,127 and 57,125,
Order on Mr. Christiansen's motions (1) to dismiss and (2) for attorney's fees, Page -2-

ORDER ON MR. CHRISTIANSEN'S MOTIONS
(1) TO DISMISS AND (2) FOR ATTORNEY'S FEES

Defendant Christiansen has asked the Court to dismiss any claims against him and to award him some attorney's fees. The court intends to grant the requests.

First, I will analyze the situation in light of the motion to dismiss.

ANALYSIS IN RE MOTION TO DISMISS

One of the claims in case number 63,695 was for damages against Zions Bank arising out of a trustee's sale conducted many years ago. Mr. Christiansen was the successful bidder and purchaser at that sale.

Plaintiffs' claims were that the sale, where their property had been sold, had been improperly announced or scheduled and improperly conducted. "Improperly" may be too weak a word to describe plaintiffs' claims - they said that the bank and Mr. Christiansen and other defendants conspired together to schedule and to conduct an illegal sale.

In any event, however, plaintiffs have now settled their claims against Zions Bank. In the process of settling, the plaintiffs signed a stipulation in which the following language appears:

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Plaintiffs ... stipulate ... that the trustee's sale ... was a bona fide, arm's length, non-collusive, valid and binding ... sale. Plaintiffs ... abandon ... all claims ... which ... challenge ... the validity ... of ... the title of the purchaser.

Admittedly, plaintiffs' stipulations were subject to certain conditions. But, so far as I know, all the conditions have been met.

Plaintiffs have no further cause of action against Mr. Christiansen. His motion to dismiss is granted.

ANALYSIS IN RE MOTION FOR ATTORNEY'S FEES

Mr. Christiansen has asked for an award of attorney's fees. He limits his request to the time period when bankruptcy case number 89B-05176 was filed and open. This case was filed in the United States Bankruptcy Court for the District of Utah by the plaintiffs as the petitioners.

Mr. Christiansen's request is based on the claim that plaintiffs should have notified the parties and the Court of (1) the filing and (2) the dismissal of the bankruptcy matter. Both events occurred during the pendency of these proceedings.

Plaintiffs gave no notice.

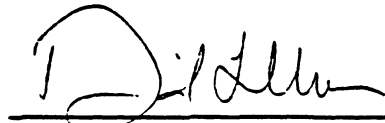
Plaintiffs' response to the motion is that no notice was required because a petitioner before the United States Bankruptcy Court can elect to trigger the automatic stay or not.

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contains words of mandate (e.g., "shall"). The filing of a petition triggers the automatic stay and automatically transfers all the petitioner's non-exempt property to the trustee.

Defendant's motion for attorney's fees is granted, subject to this condition: defendant must provide proof of the amount claimed within 30 days. A sworn affidavit will be allowed as proof, subject, of course, to objection.

Dated: 4/17/91



David L. Mower

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Order on Mr. Christiansen's motions (1) to dismiss and (2) for attorney's fees was served by U. S Mail, on the 17th day of April, 1991, on the following:

Spencer F. Hatch, 19221 Sherborne Lane,
Huntington Beach, Ca. 92646

Howard F. Hatch, 843 South 1150 East, Pleasant
Grove (84062)

Sam Primavera, 37 East 400 North, Provo, Utah
(84601)

Dwane Sykes, 1511 South Carterville Road, Orem,
Utah (84058)

Ruth Ragozzine, General Delivery, Hurricane, Utah
(84737)